Supreme Court, U.S.
FILED
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No. _____

IN THE

Supreme Court OF United States

De Shen Petitioner

vs.

T.D. Waterhouse Investor Service Respondent

On Petition For Writ Of Certiorari To

US Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

De Shen

11 Summer Ave

Malden, MA 02148

(781) 324-3285

June 20, 2004

QUESTIONS PRESENTED

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court does not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?
(7) Are there any organizations or special roles in USA, such as T.D. Waterhouse or NASD, which are beyond (or not under restricted by) the US Constitution and US Laws?
(8) If judges in the District Court or US Court of Appeals made some misjudgments, what US people can do to correct their mistake?
(9) Should Court Reform be an urgent issue to evaluate those unqualified judges?

LIST OF PARTIES

(1) PETITIONER: De Shen

(2) RESPONDENT: T.D. Waterhouse Investor Service, Inc

(3) Judges in United States Court of Appeals for the First Circuit:

Levin H. Campbell;

Juan R. Torruella;

Bruce M. Selya

(4) Judge in United States District Court for the District of Massachusetts:

William G. Young

(5) Fraud Maker who are not listed as RESPONDENT:

Suzanne Green --- NASD arbitration administrator

Elizabeth R. Clancy --- NASD Associate Vice President and Regional Director

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Executive Order 13271 of July 9, 2002

IN THE

SUPPEME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

(1) Judgment without holding any hearing was entered on February 5, 2004 as follows:
This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. See Loc. R. 27(c).

De Shen's various motions requesting that this court hold a hearing with regarding to one of his claims of fraud and order sanctions against T.D. Waterhouse for "[c]ontinually [t]elling [l]ie[s]" are denied.

(2) Order of Court without holding any hearing entered on April 6, 2004 as follows:
The petition for rehearing is denied.

(3) In the Court Orders (Include Court Orders on April 6, 2004, and on June 18, 2004, see Appendices 12, 16), the judges (includes Levin H. Campbell, Juan R. Torruella, Bruce M. Selya) in United States Court of Appeals for the First Circuit are unable to answer the

Basic Questions in Appendices 11, 13, 14, 15, which imply they have the following Opinions:

(a) Frauds should NOT be punished;
(b) If T.D. Waterhouse made a Fraud, T.D. Waterhouse should NOT be punished;
(c) If NASD made a Fraud or Frauds, NASD should NOT be punished;
(d) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, NASD should NOT be double punished;
(e) If a judge does not punish Frauds, that judge is NOT ignoring his/her duty;
(f) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court does not correct his/her mistake, that judge or that panel of judges from Appeals Court is NOT ignoring his/her/their duty.

Note: Levin H. Campbell, Juan R. Torruella, Bruce M. Selya do not have the courage to publish their opinions. But their judgment and orders (Appendices 10, 12, 16) indicates that they have the above opinions.

JURISDICTION

Bill of Rights
Executive Order 13271 of July 9, 2002
Federal Arbitration Act
15 U.S.C.A. §78a

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bill of Rights --- Amendments 1-10 of the Constitution of United States Constitution

All people are created equal.
People should have the right of the freedom of speech.

STATEMENT OF THE CASE

In this case, the Petitioner exposed the serious frauds made by the Respondent and NASD arbitration administrator. Those frauds include "fraud on modifying arbitration hearing tape" and "fraud on violating the rules of the arbitration panel selection'. All those frauds were proved by the Petitioner in the process of appeals in the United States Court of Appeals for the first Circuit (See Appendix 4, 5, 6, 7, 8, 9). The Petitioner strongly believes that the above serious frauds should be punished. Mr. William Young (the judge of the US District Court for the District of Massachusetts), Levin H. Campbell, Juan R. Torruella, Bruce M. Selya (judges in United States Court of Appeals for the First Circuit) do not punish frauds is incorrect. 'Not punish frauds' is a corruption behavior. 'Not punish frauds' sends a wrong message to the fraud-makers. 'Not punish frauds' is equivalent to harbor the frauds.

The misjudgment made by Mr. William Young (the judge of the US District court for the District of Massachusetts), Levin H. Campbell, Juan R. Torruella, Bruce M. Selya (judges in United States Court of Appeals for the first Circuit) should be reviewed and corrected by the Supreme Court of United States.

The Petitioner once said, "I am holding a great flag, a flag of justice; a flag of fair; a flag of 'All people are created equal' ". The Petitioner hopes that our judges should uphold the same flag.

REASONS FOR GRANTING THE WRIT

This case started from a relatively minor issue (Trade Mistake). However, this case becomes a **serious** case due to the Frauds made by TD Waterhouse and NASD arbitration administrator during and after the arbitration.

In the process of appeals in the US Court of Appeals for the First Circuit, the Plaintiff has the opportunity to prove all those Frauds made by TD Waterhouse and NASD arbitration administrator:

(1) By asking critical questions in the Reply Brief of Plaintiff, and the Defendant failed to submit its Reply Brief, the Plaintiff successfully proved the NASD arbitration administrator's Fraud on "cooking (editing and modifying) the arbitration hearing tape" (See Appendix 1, 3, 4).

(2) By requesting Ms. Kelly Davis testimony on this Court and by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved the "Fraud on violating the rules of arbitration panel selection" made by T.D. Waterhouse and NASD arbitration administrator; (See Appendix 5, 6, 7, 8).

(3) Also, by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved that the Defendant Hire Lawyers to Lie and Perjury in Affidavit. (See Appendix 5, 6, 7, 8, 9).

The essential issue of this case is: People against Frauds. Our judges should stand with the People side, and punish the Frauds made by TD Waterhouse and NASD arbitration administrator.

The judgment of US Court of Appears entered on Feb. 5, 2004 is a misjudgment. Because it does not punish the Frauds

made by TD Waterhouse and NASD arbitration administration. This misjudgment is sending a wrong message to those fraud makers. This misjudgment encourage TD Waterhouse and NASD arbitration administration to make more frauds because the court is protecting them from be punished. 'Not punish frauds' is a corruption behavior. This misjudgment indicates that there might be serious corruptions in the US Court of Appears.

The judges were unable to answer Petitioner's six basic questions in any of the Court Orders (include Court Orders on April 6, 2004, and on June 18, 2004, see Appendices 12, 16), proved that they do not up-hold justice and US Constitution. (See Appendix 11, 13, 14, 15)

The court order of April 6, 2004 is another mistake. The court order state: "The petition for rehearing is denied."

However, the US Court of Appears for the First Circuit did NOT hold any hearing on this issue. Where is the word "rehearing" come from?

The judges in the US Court of Appears for the First Circuit did not hold a hearing for this serious case is ignoring their duty. The judges in the US Court of Appears for the First Circuit did not hold a hearing for this serious case is against the US Constitution. Denying holding a hearing is actually abridging the freedom of speech in the US Court of Appears for the First Circuit. It is directly against the first amendment of the US Constitution. Those judges took taxpayers money. But they do not work diligently for US people. Whether they are qualified as judges is now in a big question mark. (See Appendix 11, 13, 14, 15)

CONCLUTION

Frauds should be punished.

No one should be above the US Constitution and US Laws. The frauds made by T.D. Waterhouse and NASD arbitration administrator should be punished. Those frauds include "fraud on modifying arbitration hearing tape" and "fraud on violating the rules of the arbitration panel selection'. All those frauds are serious frauds.

The Petitioner has proved all those frauds made by T.D. Waterhouse and NASD arbitration administrator during the process of appeals in the US Court of Appeals.

Mr. William Young (Judge in the US District Court for the District of Massachusetts), and the judges in United States Court of Appeals for the First Circuit (includes Levin H. Campbell, Juan R. Torruella and Bruce M. Selya) do not punish frauds made by T.D. Waterhouse and NASD arbitration administrator are corruption behaviors. This issue indicates that those judges ignored their judge's duty and should be reviewed and corrected by the US Supreme Court.

Judges in United States Court of Appeals for the First Circuit (includes Levin H. Campbell, Juan R. Torruella and Bruce M. Selya) **deny holding a hearing for this case is directly against the Constitution of the United States.** It is directly against the Bill of Rights. Justice is truth in Action. Those judges, who do not ask Ms. Kelly Davis speak out the truth and then make judgment based on the truth, are violated basic judgment principle. All the above misjudgments should be reviewed and corrected by the US Supreme Court.

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(16) Court Order of US Court of Appeals (June 18, 2004) --- Page 171

APPENDICES 1

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

No. 03-1415

Plaintiff and Appellant:)
De Shen)
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
) Appeal Action No. 03-1415
)
Defendant and Respondent:)
TD Waterhouse Investor Service, Inc)

May 4, 2003

BRIEF OF APPELLANT

On appeal from U.S. District Court, District of Massachusetts

ORAL ARGUMENT REQUESTED

APPEARANCES:

De Shen
11 Summer Ave
Malden, MA 02148

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Constitutional Provisions

Bill of Rights --- Amendments 1-10 of the Constitution

Statutes

Executive Order 13271 of July 9, 2002
15 U.S.C.A. §78a

JURISDICTIONAL STATEMENT

Bill of Right should be applied.
All people are created equal.
Pursuant to 15 U.S.C.A. §78a, Fairness is the Basic principle of stock trading.

STATEMENT OF THE ISSUES

1. Did Mr. William Young err in knowing there were some conflict interests, but still ordering this case to be judged by arbitration? (See Addendum 02)

2. Did Mr. William Young err in knowing due to conflict interests, there were Arbitration Management Frauds during the arbitration, but not investigating

and punishing the Arbitration Management Fraud? (See Addendum 03, 07, 08, 09)

3. Did Mr. William Young err in knowing due to the conflict interests, there were Arbitration Management Frauds, and the Arbitrators did not make fair arbitration, but still confirming the Arbitration Award? (See Addendum 07, 08)

4. Did Mr. William Young err in against the common sense, denying that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness? (See Addendum 07)

5. Did Mr. William Young err in knowing that the judgment should be based on facts, but denying the Plaintiff compel the Defendant to present case related critical data to the Court? (See Addendum 04)

6. Did Mr. William Young err in denying having a hearing in Oct. 7, 2002's Court ruling? Did Mr. William Young err in denying providing reasoning for his ruling in the Oct. 20, 2002's Court ruling? (See Addendum 05, 06)

7. Did Mr. William Young err in denying the Plaintiff's motion to 'Request Ms. Kelly Davis To Testimony on the Court'? (See Addendum 09)

8. Did Mr. William Young err in denying the Plaintiff's motion to 'To Add NASD Dispute Resolution, Inc to Defendant List of This Case'? (See Addendum 09)

9. This case is so simple, so obvious, however, the Arbitration made a wrong arbitration, Mr. William Young confirmed this wrong arbitration result. Is there any factors of 'race discrimination against Asia American' influenced this case?

10. Should Mr. William Young study the new law passed by Congress and Senate, signed by President, and uphold those new laws? (See Addendum 07, Appendix 33)

STATEMENT OF THE CASE

In this case, the Plaintiff exposed the Defendant's trade fraud, the arbitration management fraud, the arbitration panel's unfair judgment, and the Mr. William Young's misjudgment.
The Plaintiff once said, "I am holding a great flag, a flag of justice; a flag of fair; a flag of 'All people are created equal'" (See Appendix 12). The Plaintiff hopes that our judges should uphold the same flag.

STATEMENT OF THE FACTS

On March 7, 2000, a trade fraud was happened. The Market Recap (See Appendix 01) of March 7, 2000 had clearly indicated that it is the Defendant's mistake. After many times phone calls between the Plaintiff and the Defendant, the Defendant did not commit its mistake. Hence, a law suite was filed (See Appendix 05) under the suggestion of the lawyer of the week of the Framingham Court. The Defendant requested to handle this case by arbitration. However,

the Plaintiff believe that the customers have the freedom right to choose whether to solve this case by arbitration or by court according to the Bill Of Right. Judge Young held a conference with the Plaintiff and the Defendant. The judge informed both sides that this case should go through arbitration first. However, if the Plaintiff feels that the result is not proper, or there is any item cannot be arbitrated, the judge would like to continue handling this case on the court.

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration. On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by arbitration (See Appendix 03, 06). In this motion, the Plaintiff requested this case should be handled by the District Court according to the Bill Of Right. However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution.

Although the Plaintiff worried about that there might be some conflict interests issues by going through the arbitration, the Plaintiff decided to follow the judge's order to seriously go through the arbitration first. The Arbitration Statement of Claim was submitted on July 26, 2001 (See Appendix 08). The arbitration hearing held on June 20, 2002.

As predicted, due to the conflict interest, **the arbitration management frauds were happened**, and the award of arbitration is extremely unfair (See Appendix 09, 10, 14). It unfairly dismissed the

Plaintiff's claim in the entirety. **Every item in the Plaintiff's Statement of Claim was not be arbitrated! There is no any conclusion from the arbitrators on each item of the Plaintiff's Statement of Claim. Of cause, there is no any reasoning on how to get those conclusions!**
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath was not punished.

Due to the conflict interests, when organizing the arbitration panel, the arbitration administrator forged the arbitration panel. After the arbitration, the arbitration administrator modified the hearing tape.

Considering that Mr. William Young promised that if the arbitrators do not arbitrate some of the items in the Plaintiff's Complaint, the Plaintiff could come back to the Court (See Appendix 04), the Plaintiff submitted a motion to request to re-open this case in the District Court on Aug. 17, 2002 (See Appendix 17, 18). In this motion and the cover letter, the Plaintiff reported the unfair arbitration result, including that many items are not arbitrated at all. The Plaintiff also reported the Arbitration Management Fraud to the Court. However, Mr. William Young broken his promise, and denied this motion (See Appendix 20).

Considering that Judgment should base on facts instead of prejudice, the entire arbitration is baseless since until now the Defendant has not submitted the case related critical trading data yet. Hence, the Plaintiff submitted a motion to "Compel The Production Of Documents" on Aug. 29, 2002(See Appendix 19). However, Mr. William Young ignored that the fact that due to Conflict Interests, the arbitration result is extremely unfair, and denied the Plaintiff's motion (See Appendix 21).

Considering that the Court denied the Plaintiff's motions might be all based on a wrong assumption that the arbitration conducted a fair resolution. The Plaintiff submitted the third motion (See Appendix 22) on Sep. 29, 2002 to request a hearing, so that the Plaintiff can explain to the Court why the arbitration result is extremely unfair. A good judge should listen to the people. However, Mr. William Young even denied this basic requirement on Oct. 7, 2002 (See Appendix 23).

The Plaintiff was really surprised about Mr. William Young's ruling on Oct. 7, 2002. Hence, the Plaintiff submitted a motion to "Requesting the reason of court ruling on Oct. 7, 2002" (See Appendix 24). Unfortunately, the Plaintiff even cannot get the reasoning from the court. Mr. William Young was even unable to provide any reasoning (i.e. according to which law(s)) about his ruling (See Appendix 25).

The Plaintiff has to request the Transcript of the conference of Nov. 14, 2000, on which, Mr. William Young promised to the Plaintiff that the Plaintiff can come back to Court if the arbitration result is unfair or

some items in the Complaint are not arbitrated. On Nov. 4, 2002, the Plaintiff received a copy of the Transcript (See Appendix 04).

Since the arbitration administrator edited the arbitration hearing tapes and denied to provide a true copy of arbitration hearing tapes. The Plaintiff submitted a motion to "Compel NASD to Provide True Copy Of Hearing Tape Of Case 01-03697" on Nov. 16, 2002 (See Appendix 26). The original hearing tapes are four tapes. The edited tapes are three tapes(See Appendix 16). However, Mr. William Young even denied punishing the arbitration administrator's criminal actions. The Plaintiff's motion was denied.

According to Mr. William Young's word on the deny letter, the Plaintiff submitted a motion to "Request Vacation of the Arbitration Award on Case NASD No. 01-03697" (See Appendix 27). Finally, Mr. William Young agreed to have a hearing on this issue. The Plaintiff saw a glimpse of hope that the justice might be fulfilled on this case by the hearing. The hearing was held on Feb 6, 2003.

Unfortunately, Mr. William Young did not make a fair judgment on this hearing (See Appendix 28). (1) Mr. William Young claimed this case is "a serious one". However, Mr. William Young did not handle this case seriously. Mr. William Young did not investigate the arbitration management fraud. Also, he did not investigated on the trade fraud. Judgment should be based on the fact, however, Mr. William Young did not request the Defendant providing the case related critical data. (2) Mr. William Young

ignored the arbitration management fraud on forging the arbitration panel list, claimed, "If you get a biased arbitrator, they won." (3) Mr. William Young ignored the arbitration management fraud on 'cooking' the hearing tape, and asked the silly question "Suppose that is true, what does that show?". "Falsifying records" is against the Congress and Senate passed new law and the President's speech (See Appendix 33), Mr. Suzanne Green's bad action has breached the people's trust and abused NASD's power. This criminal action should be punished. However, Mr. William Young did not uphold Congress and Senate passed new law, and did not punish Mr. Suzanne Green's criminal action. (4) Mr. William Young even challenged the fairness of stock trading, deny that "First come, first serve" should be one of the criteria of fairness in stock trading. (5) Mr. William Young ignored the arbitration management fraud, and claim that "Arbitration is second-class justice", so that no matter the arbitration administrator made how serious criminal action, the arbitration result has to be confirmed. According to Mr. William Young's logic, the arbitration administrator is just like the Emperor or Empress, who can do any criminal actions as his/her will, and cannot be punished.

SUMMARY OF ARGUMENT

According to the Bill of Right, due to the conflict interests, this case should be handled by the District Court from the beginning. Ordering this case to be handled by NASD arbitration is one misjudgment.

The District Court should investigate the arbitration management frauds and punish those arbitration management frauds.

The unfair arbitration result should be vacated.
The Defendant's failure to execute customer's order should be punished;
The Defendant's cheating and insulting customer should be punished;
The Defendant's cheating SEC should be punished;
The Defendant's lying under the oath should be punished;
The Defendant failed to provide case related critical information should be punished;
The Defendant's invading the Plaintiff's privacy should be punished;
The Defendant's blocking customer's on-line account should be punished.

Mr. William Young should study and uphold the new law, which passed by Congress and Senate, and signed by the President.

ARGUMENT

I. Conflict interest should be avoided

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration.

On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by arbitration.

"On the Nov 14's conference, our Honorable Judge Young suggests that the Plaintiff should go through Arbitration first. If the problems cannot be solved or the problems were not solved properly, then our Honorable Judge will accept to handle this case with justice in this court. The Plaintiff agreed to follow our Honorable Judge's suggestion. The Plaintiff rewrote a Complaint for Arbitration (See Attached). **However, after rewriting the Complaint, the Plaintiff discovered that there is a conflict interest if this case goes through arbitration.** Mr. Sullivan informed me that I might bring arbitration before either the NASD or NYSE. The count 8 in the new Complaint document might be closely related to NASD and NYSE. With my understanding, NASD or NYSE cannot arbitrate itself since there is a conflict interest. Hence, the Plaintiff would like to present this point to our Honorable Judge. After considering avoiding the conflict interest, the Plaintiff strongly requests this case to be re-opened and to be handled directly through this court.

.....

I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the Defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

"

However, the court denied this motion (See Appendix 07). The Plaintiff believes this ruling

was incorrect. It is violated the Constitution. In the count 8 of the Plaintiff's Complaint, the Plaintiff pointed out that one NASD's contract tries to prevent Defendant's customer presenting valid data evidence to the honorable Judge in the court. NASD cannot arbitrate itself. The conflict interest should be avoided. With the conflict interest, the arbitration will be not fair. Further, Freedom of Speech is included in the Bill of Rights (the first ten amendments of US Constitution). According to the Bill of Rights, people should have the right to choose whether they want to handle their case by arbitration or by Court.

II. Arbitration Management Fraud should be punished.

(a) Fraud in organizing the Arbitration Panel

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all the arbitrators should come from the Plaintiff selected arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel from Ms. Suzanne Green, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told me that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the Plaintiff had to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the Plaintiff sent to the President of NASD, the Plaintiff wrote:
"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the Defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter. In her letter, **Ms. Clancy provided a third version** of this timing: "Respondent's ranking form was sent to us by facsimile, and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001." People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?*

Until now, who was lying, who was cover up, is still a riddle. The Plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. Until now, Ms. Kelly Davis has not lie yet. ***The Plaintiff request Ms. Kelly Davis to testimony on the court.*** If Ms. Kelly Davis could tell the truth on the court, the Plaintiff request the Court protect Ms. Kelly Davis. avoid the revenges from NASD. If she does not tell the truth on the court, then this issue will be covered up. The Plaintiff wonders whether the Court is talent enough to expose the truth.

(b) Fraud on 'Cooking' Hearing Tape

(Forgery is a Criminal Behavior)

The Plaintiff received the hearing tape of the arbitration (NASD No. 01-03697) on Aug. 10, 2002. When the Plaintiff listen to the tape, the Plaintiff

discovered that many content of the arbitration hearing are not in the tape.

On the arbitration, the arbitrators openly bias in favor of the Defendant. For example, when the Plaintiff asked the Defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects the Defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said:
"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -

- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government can ensure that those who breach the trust of the American people are punished."

The arbitrators helped the Defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It is Trade Secret". The arbitrators' action and the Defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the Defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The Plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

The Plaintiff believes that the Defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.
(b) Promote Reporters, Lawyers and Security Workers to support world peace and justice.
(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.
(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said:
"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

The Plaintiff believes that it is the time, on this court, to expose the Defendant's trade fraud and NASD's cooking the hearing tape. ***The Plaintiff respectively requests the court:***

(I) ***Order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the Plaintiff and to this court;***

(II) ***Order the Defendant to provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the Plaintiff and to this court.***

The Plaintiff believes that this court, as one part of the US government, has the guts and power to make the above orders.

III. The Arbitration Award should be vacated. This case should be handled in the court with Juries.

According to Judge Young's statement on July 2, 2001, the Plaintiff seriously went through the arbitration with the Defendant from July 26, 2001 to July 20, 2002. As predict, due to the conflict interest, NASD was unable to fairly make item-by-item judgment on this case.

(a) Justice judgment should base on fair examination of facts.

The Defendant rejected to provide the case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. The Defendant claims that: Market orders receive execution priority (See Respondent's amended statement of answer, page 3, line 7). However, the Defendant failed to prove that all the sell orders of those 170 transactions are Market orders. And as long as one sell order of those 170 transactions is NOT Market order, the Defendant's argument is automatically defeated. ***According to statistics theory, it is almost impossible that all the sell orders of those 170 transactions are Market orders.*** If the arbitrators understand statistics theory,

they can reach the conclusion immediately that the Defendant is lying and the Defendant is responsible for the failure to execute the Plaintiff's order. If the arbitrators don't understand the statistics theory, then they should ask the Defendant to provide detailed information about the order type of the sell orders of those 170 transactions to get the right conclusion. With unfair arbitration, the Defendant has not provided the case related critical information until today. ***The Plaintiff strongly requests the Court compel the Defendant to provide the critical case related document requested by the Plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".***

(b) Justice judgment should base on the principle of "All People are created equal".

However, the Defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the Defendant's willing. The three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath were not punished;
The Defendant failed to provide case related critical information was not punished;

The Defendant's invading the Plaintiff's privacy was not punished;
In general, the Defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

(c) Fairness should be the basic principle for stock trading

"First come, first serve" should be one of the basic rules for stock trading. The Plaintiff asked many experts on stock trading (include some arbitrators and lawyers) the following question:
"If there are 10 same limit orders to sell 5000 shares stock XYZ at price $2.00, Person A placed order on Feb. 23, 2000, while others placed the same order on March 7, 2000. When Market bid price exceeded $2.00, which order should be executed first?" **All the answer are same: "Person A's order should be executed first because that order placed first."**

Mr. William Young challenging this basic stock-trading rule on the hearing of Feb 6, 2003 is incorrect.

(d) Arbitration Result is NOT always correct

Mr. William Young claimed, "Arbitration is second-class justice" (Feb 6, 2003, Motion Hearing Transcript, Page 10, Line 25). According to this assumption, Mr. William Young blindly confirmed the Arbitration award. Now, I start to understand why Ms. Suzanne Green dares to forge the Arbitration Panel. Now, I start to understand why Ms. Suzanne Green dares to "cook" the Hearing Tape. Now, I start to understand why the Arbitrators dare to help the

Defendant to hide the unfair trading Data. It is because they have the "Umbrella" of "Arbitration is second-class justice". With this "Umbrella", No matter how many criminal actions they did, no one will punish them! However, people have to ask Mr. William Young: If you do not work hard to investigate each case, if you do not have talent to distinguish who is good, who is bad, who did criminal actions, if you do not uphold justice, do not punish the criminal actions, why people need to you? People need you is because Arbitration Result is NOT always correct, especially there is conflict interests involved. Unfair Arbitration result should be corrected by the Court. If our Mr. William Young does not correct those Arbitration Mistakes, then, our Mr. William Young is neglecting his duties.

According to our Mr. William Young's logic, then, the civil court will be the "first justice". Hence, our Mr. William Young will be always right since he is the chief Judge in this court. Hence, there will be no need to have Appeal Court and Supreme Court. Fortunately, US People do not trust our Mr. William Young's logic. Mr. William Young might make mistakes. Mr. William Young's mistakes should be corrected by the Appeal Court and/or Supreme Court. Anyone should obey the law. Ms. Suzanne Green's Arbitration Management fraud should be punished. TD Water House's trade fraud should be punished.

IV. Mr. William Young should study new law and uphold the new law.

Congress and Senate worked very hard to pass the new law on "Tough New Enforcement Initiatives for Reform on Corporate Responsibility". The president of USA signed this new law and uses different opportunities to explain the new law to the people. Should Mr. William Young study hard about this new law? Should the Supreme Court of the United States request Mr. William Young to uphold this new law? If our judge Young does not study the new law, ignore those criminal behaviors which violating the new law passed by Congress and Senate, does not punish those criminal behaviors, should he think about whether he neglected his duty?

CONCLUSION OF THE BRIEF

(I) It is a mistake that Mr. William Young ignored that there were conflict interests if this case handled by NASD arbitration, and denied the Plaintiff's Motions of request to handle this case in the District Court. Conflict interests should be avoided. This case should be handled by the Federal District Court.

(II) It is a mistake that Mr. William Young ignored that due to the conflict interests, the NASD fraudulently managed this arbitration, and confirmed the arbitration award. Mr. William Young should study the new law passed by the Congress and the Senate, signed by the President. Mr. William Young should be bound to uphold this new law. The Arbitration Management Fraud should be punished. The Arbitration Award should be vacated.

(III) NASD's Arbitration Management Fraud should be punished. The minimum punishment should be $1,000,000.00.

(IV) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(V) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

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APPENDICES 2

Appeal Nos. 03-1415; 03-1478

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DE SHEN

Plaintiff - Appellant\Cross - Appellee

v.

T.D. WATERHOUSE INVESTOR SERVICES, INC.

Defendant - Appellee\Cross - Appellant

Appeal from the United States District Court
for the District of Massachusetts in Civil Action
00-11190WGY

BRIEF FOR DEFENDANT - APPELLEE\CROSS - APPELLANT

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CORPORATE DISCLOSURE STATEMENT

T.D. Waterhouse Investor Services, Inc. hereby states that its parent corporation is T.D. Waterhouse Group, Inc. and that there are no publicly held corporations that own 10% or more of its stock.

Dated: July 28, 2003

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JURISDICTIONAL STATEMENT

A. The District Court had subject matter jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 78aa and 9 U.S.C. § 9. De Shen brought claims under the federal securities laws. *See,* 15 U.S.C. § 78a *et seq*. TD Waterhouse sought confirmation of the arbitration award under the Federal Arbitration Act and De Shen sought to vacate the arbitration award under the Federal Arbitration Act.

B. The First Circuit Court of Appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

A judgment that disposed of all claims with respect to all parties was signed on February 27, 2003 and docketed that day. A notice of appeal was filed on March 24, 2003. A notice of cross-appeal was filed on April 3, 2003.

ISSUES PRESENTED FOR REVIEW BY TD WATERHOUSE IN ITS CROSS APPEAL

1. Did the District Court err in holding that De Shen's Motion to Re-open the case constituted a Motion to Vacate the arbitration award and therefore that De Shen had filed the Motion to Vacate within the three (3) month period required by the Federal Arbitration Act.

STATEMENT OF THE CASE

Plaintiff - Appellant\Cross - Appellee De Shen (hereinafter "De Shen" or "Appellant") filed a complaint for "trade fraud" against Defendant - Appellee\Cross - Appellant TD Waterhouse Investor Services, Inc. (hereinafter "TD Waterhouse" or "Appellee") in federal

court on June 4, 2000. TD Waterhouse moved the District Court to compel arbitration and stay litigation on July 12, 2000. The District Court ordered that this case be arbitrated, and stayed the federal court litigation on July 17, 2000.

De Shen filed a Statement of Claim in arbitration on August 23, 2001. *See, Appellant's Appendix*, Tab 8. TD Waterhouse filed its Statement of Answer on November 7, 2001. *See, Appellee's Appendix*, Tab 1. De Shen filed an Amended Statement of Claim in arbitration on March 28, 2002. *See, Appellant's Appendix*, Tab 11. TD Waterhouse filed an Amended Statement of Answer on June 19, 2002. *See, Appellee's Appendix*, Tab 2. De Shen's claims against TD Waterhouse were considered at arbitration before the National Association of Securities Dealers, Inc. ("NASD") on June 20 and 21, 2002. A panel of three arbitrators dismissed De Shen's claims in their

entirety in an Award dated July 18, 2002. *See,*

***Appellant's Appendix*, Tab 14.**

De Shen wrote the District Court on August 16, 2002, requesting that the case be re-opened and submitted a Motion to Re-open the case. *See, Appellant's Appendix*, Tabs 17, 18. The District Court treated that motion as a Motion for Reconsideration and denied it on September 6, 2002. *See, Appellant's Appendix*, Tab 20. De Shen then filed a Motion to Request Vacation of the Arbitration Award (referred to throughout this Appellee's Brief as "Motion to Vacate") with the District Court on December 16, 2002. *See, Appellant's Appendix*, Tab 25. TD Waterhouse objected to the Motion to Vacate and filed its own Motion to Confirm the Arbitration Award (hereinafter "Motion to Confirm") on December 30, 2002. *See, Appellee's Appendix*, Tab 3. The District Court denied De Shen's Motion to Vacate and allowed TD Waterhouse's Motion to Confirm on February 27, 2003. The cross appeals now before this Court followed.

STATEMENT OF FACTS

Once this case proceeded to arbitration under the rules of the NASD, the parties selected arbitrators pursuant to NASD Dispute Resolution ("NASD DR") Rule 10308. *See, Appellee's Appendix*, Tab 4. TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules. *Id.*

Pursuant to NASD DR rules, De Shen filed a Request for Production of Documents to TD Waterhouse with the NASD on November 25, 2001. *See, Appellee's Appendix,* Tab 5. De Shen did not serve the Request for Production of Documents to TD Waterhouse until March 4, 2002. *See, Appellee's Appendix,* Tab 6. TD Waterhouse responded to De Shen's Request for Production of Documents on April 3, 2002. *See Appellee's Appendix,* Tab 7.

On April 14, 2002, De Shen filed a Motion to Amend his Statement of Claim in Arbitration. *See, Appellee's Appendix,* Tab 8. TD Waterhouse objected to the Motion to Amend on April 26, 2002, and argued that the proposed new claims did nothing more than attack counsel and raise discovery issues. *See, Appellee's Appendix,* Tab 9. The arbitration panel allowed De Shen's Motion to amend over TD Waterhouse's objections. *See, Appellee's Appendix,* Tab 10. The Amended Statement of Claim included a claim that TD Waterhouse failed to produce documents that De Shen believed were relevant (and to which TD Waterhouse had timely filed objections). *See, Appellant's Appendix*, Tab 11. The arbitration panel also ordered that the arbitration proceed despite the fact that De Shen had not produced <u>any</u> documents to TD Waterhouse in discovery. *See, Appellee's Appendix,* Tab 11.

At the arbitration, the Panel heard all of the evidence presented by both parties. The arbitrators also considered and ruled on evidentiary issues raised by the parties. Subsequent to the arbitration, De Shen obtained copies of the hearing tapes, which recorded the arbitration proceedings. (The NASD preserves the hearing record on those cassette tapes). De Shen complained to the NASD that he did not receive all of the tapes (De Shen received three (3) tapes and claims that

four (4) existed) and that some of the contents of the hearing were missing from the tapes. *See, Appellee's Appendix,* Tab 12. The NASD notified De Shen on August 14, 2002 that "there were a total of three (3) tapes used to record the hearing on the merits" and that the NASD had provided De Shen with an "exact" copy of the tapes. *Id.*

SUMMARY OF ARGUMENT

The District Court erred as a matter of law when it ruled that De Shen's Motion to Re-open the case constituted a Motion to Vacate ("Motion") which, in effect, tolled the three (3) month deadline for De Shen to file and serve the Motion on TD Waterhouse under Section 10 of the Federal Arbitration Act. De Shen's failure to file his Motion and notify TD Waterhouse of the Motion within the three-month period provided for in the Federal Arbitration Act precluded the District Court's consideration of the Motion.

De Shen contests the validity of the arbitration award on many fronts and seeks to have the award vacated under Section 10 of the Federal Arbitration Act. Many of the issues raised by De Shen are untimely. Further, De Shen fails to meet his burden with respect to those issues that are timely. Under Section 10 of the Federal Arbitration Act, De Shen fails to show that TD Waterhouse obtained

the arbitration award through fraud or corruption; that there was evident partiality or corruption in the arbitrators; or, that the arbitrators refused to hear evidence pertinent and material to the controversy. This Court should affirm the decision of the District Court denying De Shen's Motion to vacate and allowing TD Waterhouse's Motion to Confirm.

ARGUMENT

. De Shen failed to file the Motion to Vacate within the time allowed by law.

This Court reviews questions of law *de novo*. *See, Arecibo Community Health Care, Inc. v. Commonwealth of Puerto Rico*, 270 F.3d 17, 22 (1st Cir. 2001). Section 12 of the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* ("FAA") states:

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney *within three months after the award is filed or delivered...*

9 U.S.C. § 12 (emphasis added). The NASD Award dismissing De Shen's claims in their entirety was filed and delivered on July 18, 2002. *See, Appellant's Appendix*, Tab

14. De Shen filed the Motion to Vacate on December 16, 2002 (*see, Appellant's Appendix*, Tab 25); nearly five-months after the NASD filed and delivered the Award and well past the three-month deadline imposed by the Federal Arbitration Act.

The federal cases are uniform in holding that a party's failure to file a motion to vacate within the time prescribed by the FAA precludes a district court from considering the motion. *See, Witt v. Reinholdt & Gardner*, 587 F. 2d 383, 384 (8th Cir. Mo., 1978) (failure to give notice of motion to vacate, modify, or correct award pursuant to 9 U.S.C. § 12 will justify dismissal of action); *see also, Piccolo v. Dain, Kalman & Quail, Inc.*, 641 F.2d 598, 600 (8th Cir., Neb. 1981) (party to arbitration award who fails to comply with statutory precondition of timely service of notice forfeits right to judicial review of award; thus, District Court properly determined that customers' failure to serve their complaint on broker or its attorney within three months of

arbitration award in favor of broker deprived it of power to review award); *Sanders-Midwest, Inc. v. Midwest Pipe Fabricators, Inc.*, 857 F.2d 1235, 1237 (8th Cir., Mo., 1988) (District Court was barred from considering application to vacate arbitration award because party applying to vacate award failed to give notice of its objections to award within three months after award was filed; furthermore, no exceptions to time for service of notice appear in Federal Act, and rule applies to claims challenging partiality of arbitrator).

In this Circuit, the District Court for the District of Puerto Rico has held that an action seeking to overturn an arbitration award in favor of a securities brokerage would be dismissed for untimeliness, even though the plaintiff filed the action within three months of notification of the arbitration award, because the plaintiff failed to serve notice of the action on the brokerage firm within the three month period under the FAA. *See, Franco v. Prudential Bache Securities, Inc.*, 719 F.Supp. 63, 64 (D. Puerto Rico, 1989). *Franco* is distinguishable from the present case as De Shen failed to file his Motion to Vacate within the three-month period.

De Shen may not toll the three-month limitations period of Section 12 of the FAA through his filing of the Motion to "Re-open" the case on August 17, 2002. De Shen

argued, and the District Court agreed, that that motion constitutes a motion to vacate. The District Court held that the Motion to Vacate should relate back to the filing date of the August 17, 2002 Motion to "Re-open". *See, Appellant's Appendix,* Tab 25, p. 6.

The District Court, however, had denied the August 17, 2002 Motion to "Re-open" by Order dated September 6, 2002. In the District Court's Order, the Court stated that it was treating Plaintiff's Motion to "Re-open" as a motion for reconsideration of the Arbitration Award. *See, Appellant's Appendix*, Tab 20. Plaintiff never appealed the District Court's September 6, 2002 Order. The District Court cited no authority supporting its conclusion that De Shen's filing of the motion to re-open should toll the three-month deadline of Section 12 of the FAA. The overwhelming weight of authority compels just the opposite result.

The three-month deadline found in Section 12 of the FAA acts as a statute of limitations. *See, Foster v. Turley,* 808 F. 2d 38, 41 (10th Cir. 1986). In a case mirroring the facts

before this Court, the Western District of Missouri denied as untimely a Motion to Vacate an arbitration award, where it was served on the adverse party more than 4 months after the parties received notice of the arbitration panel's decision, and time was not tolled by a separate request to reopen the arbitration, nor did the motion relate back to a motion for an order staying confirmation of the arbitration award, filed within the 3-month period. *See, McClelland v. Azrilyan,* 31 F.Supp. 2d 707, 709-712 (W. D. Mo. 1998). The *McClelland* court noted that the Federal Arbitration Act does not provide for any statutory exceptions to the three-month service requirement. *Id.* at 710. *McClelland* is in accord with other courts that have considered this issue. *See, Taylor v. Nelson,* 788 F. 2d 220, 225 (4th Cir. 1986) (the existence of a tolling exception is questionable for it is not implicit in the language of the statute and cannot be described as a common law exception).

The District Court's decision tolling the three-month limitations period of Section 12 of the FAA should be reversed as a matter of law. De Shen's failure to file his Motion to Vacate and notify TD Waterhouse of the Motion within the three-month period provided for in the Federal Arbitration Act precluded the District Court's consideration of the Motion.

II. The District Court properly stayed proceedings in federal court, ordering arbitration under the rules of the National Association of Securities Dealers ("NASD").

This Court reviews the District Court's Order staying federal court litigation and compelling arbitration as it would any other decision finding an agreement between the parties;

the Court should accept findings of fact that are not "clearly erroneous" and decide questions of law *de novo*. *See, First Options of Chicago, Inc. v. Manuel Kaplan, et ux. and MK Investments, Inc.*, 514 U.S. 938, 947-948, 115 S. Ct. 1920 (1995).

It is well settled that under Section 2 of the FAA, a written agreement to arbitrate contained in any "contract evidencing a transaction involving commerce…shall be valid, irrevocable and enforceable." The Supreme Court has explained "[t]he effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the [FAA]." *See, Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927 (1983).

A party's agreement to arbitrate is a matter of contract law. *See, AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S. 643, 649, 106 S. Ct. 1415

(1986); *The Newspaper Guild of Salem v. Ottaway*

Newspapers, Inc.,

79 F. 3d 1273, 1279 (1st Cir. 1996). The FAA provides that, as soon as a court is satisfied as to the existence of an arbitrable dispute, it "shall" do two things: (1) compel the parties to arbitrate that dispute in accordance with the applicable provisions of their agreement; and (2) stay further litigation as to arbitrable claims. *See,* 9 U.S.C. §§ 3, 4. "By its terms, the [FAA] leaves no place for the exercise of discretion…but instead mandates that…courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed. *See, Dean Witter Reynolds Inc. v. Byrd,* 470 U.S. 213, 218, 105 S. Ct. 1238 (1985). In considering these factors, courts are guided by the principal that there is a "strong," "widely recognized" federal policy in favor of arbitration. *See, Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332 (1987); *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer,* 29 F.3d 727, 730-31 (1st Cir. 1994) (and the cases cited therein).

De Shen was bound by his TD Waterhouse new account application, which required him to arbitrate this dispute. *See, Appellee's Appendix,* Tab 13. The new account application constitutes a contract "evidencing a transaction involving commerce," as defined under the FAA. *See,* 9 U.S.C. § 2. The District Court properly stayed proceedings in federal court, ordering the parties to arbitration.

De Shen argues that the Bill of Rights affords him the right to choose whether this case proceeds in court or in arbitration. De Shen offers no authority, other than his reference to the right to "freedom of speech," to support this assertion. De Shen's assertion fails as a matter of law.

III. The District Court correctly denied De Shen's Motion to Vacate on the merits.

A. Standard of Review

A federal court is empowered to vacate an arbitrator's award only on grounds specified in 9 U.S.C. § 10, and courts are precluded from considering factual or legal issues which are by voluntary agreement made subject of arbitration; judicial intrusion is restricted to extraordinary situations indicating abuse of an arbitrator's power or the exercise of power beyond the jurisdiction of an arbitrator. *See, Mobil Oil Corp. v. Oil, Chemical & Atomic Workers Int'l Union*, 600 F.2d 322, 326 (1st Cir. 1979). This Court's review of the district court's ruling on an arbitration award is *de novo*. *See, Wonderland Greyhound Park, Inc. v. Westwood Group Inc.*, 274 F.3d 34, 35 (1st Cir. 2001). Judicial review of the arbitrator's decision is extremely narrow and exceedingly deferential. *Id.* An arbitrator's award must be enforced if it is in any way plausible, even if the Court thinks the arbitrator committed serious error. *Id.* An arbitrator's factual findings are generally not open to judicial challenge. *Id.* at 36-37.

B. Section 10 of the FAA

Section 10 of the FAA provides that a court may vacate an arbitration award in the following circumstances:

> (20611) where the award was procured by corruption, fraud, or undue means;
>
> (20612) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> **(20613)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other

misbehavior by which the rights of any party have been prejudiced; or

(20614) where the arbitrators exceed their powers, or so imperfectly exercised them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10. De Shen's appeal, arguably, implicates the first three circumstances.

C. TD Waterhouse did not obtain the arbitration award by corruption, fraud, or undue means.

De Shen argues that the District Court should have vacated the arbitration award because of "arbitration management fraud." De Shen's brief complains of two (2) such "arbitration management frauds": (1) fraud in organizing the arbitration panel, and (2) fraud in "cooking hearing tape."

De Shen must establish fraud by clear and convincing evidence and must show that the fraud materially related to an issue in arbitration. *See, LaFarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986) (citing *Dogherra v. Safeway Stores, Inc.*, 679 F.2d

1293 (9th Cir. 1982) *cert den.*, 459 U.S. 990, 74 L.Ed.2d 386, 103 S.Ct. 346 (1982)); *see also Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383 (11th Cir. 1988) (citing *Dogherra, supra).*

Under these standards, De Shen cannot show that TD Waterhouse obtained the arbitration award by corruption or fraud. De Shen has not offered clear and convincing evidence that the arbitration award was obtained by fraud. The record clearly supports the fact that the arbitration panel was selected under the rules of the NASD DR. *See, Appellee's Appendix*, Tab 4. The record also clearly supports the fact that De Shen was provided with an "exact" copy of the hearing tapes. *See, Appellee's Appendix*, Tab 12. De Shen only offers unsubstantiated assertions to the contrary. Additionally, De Shen cannot maintain that either of these alleged "frauds" materially related to an issue in arbitration. *See, LaFarge Conseils Et Etudes, S.A.*, 791 F.2d at 1339. Both of the alleged "frauds" complained of by De Shen are procedural in nature and do not relate to any of the issues raised by De Shen in his Statement of Claim or Amended Statement of Claim. De Shen has not and cannot argue that TD Waterhouse acted fraudulently in regards to any issue raised by him at the arbitration.

De Shen does not meet his burden of proof and has not shown by clear and convincing evidence that TD Waterhouse obtained the arbitration award by fraud or corruption.

D. The arbitrators displayed no evident partiality or corruption.

De Shen argues that the arbitration panel was not fit to hear this case in arbitration because Count 8 of De Shen's Amended Statement of Claim implicated a potential conflict

of interest for the NASD. *See, Appellant's Brief*, p. 9. Count 8 of De shen's Amended Statement of Claim raises questions about T.D. Watehouse's objections to De Shen's discovery requests. *See Appellant's Appendix*, Tab 11. The arbitration panel specifically considered this Count in its decision. *See Appellant's Appendix*, Tab 14.

The FAA authorizes a court to vacate an arbitration award where there was evident partiality or corruption in the arbitrator. *See, Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, AFL-CIO*, 76 F. Supp.2d 77, 79 (D. Mass. 1999) (citing 9 U.S.C. § 10(a)(2)). Evident partiality, however, means more than just an appearance of bias. *Id.* (citing *Florasynth, Inc. v. Pickolz*, 750 F.2d 171, 173 (2nd Cir. 1984)). The burden is on the moving party to provide evidence of bias sufficient for a reasonable person to conclude that an arbitrator was partial to the other party to the arbitration. *Id.* (citing *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 991 F.2d 141, 146 (4th Cir. 1993)).

De Shen offers no evidence that the arbitration panel was partial to TD Waterhouse. De Shen argues that the NASD was conflicted because Count 8 of the Amended Statement of Claim somehow implicates the NASD. The NASD was never a party to these proceedings. Furthermore, De Shen's allegations are merely assertions and find no support in the record. De Shen incorrectly concludes that the NASD is conflicted because of the arbitration panel's evidentiary ruling. No reasonable person could conclude that the arbitration panel was partial to TD

Waterhouse from the record before this Court. De Shen fails to meet his burden to show that there was evident partiality or corruption in the arbitrators.

E. The arbitrators did not refuse to hear evidence pertinent and material to the controversy.

De Shen argues that the arbitration panel impermissibly denied his request for "case related critical data". *See, Appellant's Brief,* p. 4. De Shen refers to his request for "all the documents and information about the orders related to all the 137 transactions on PTUS (the stock at issue in the Statement of Claim and the Amended Statement of Claim), which were executed between 10:23:39 to 12:04:28 of March 7, 2000." *See, Appellee's Appendix,* Tab 5. TD Waterhouse objected to that request. *See, Appellee's Appendix,* Tab 7. De Shen also complains that the arbitration panel did not rule on "every item in the Plaintiff's Statement of Claim" and did not offer any reasoning for the Panel's conclusions. *See, Appellant's Brief,* p. 6.

At the arbitration, TD Waterhouse offered testimony regarding the transactions referred to by De Shen in his discovery requests and the substance of De Shen's Statement of Claim and Amended Statement of Claim generally. The

arbitrators also addressed all evidentiary issues raised by the parties.

Arbitrators are not bound by rules of evidence and may draw on their personal knowledge in rendering an award. *See, Bernhardt v. Polygraphic Co. of America,* 350 U.S. 198, 204, 100 L.Ed. 199, 76 S.Ct. 273 (1956). Arbitrators need not disclose facts or reasons behind an arbitration award. *Id.* An arbitrator's conclusions on procedural matters may be vacated only where an award demonstrates a manifest disregard of law or where the award is irrational; judicial review is limited by the rule of deference where procedural questions are intertwined with the merits of a dispute and court review would result in serious delay and duplication of effort. *See, e.g., Stroh Container Co. v. Delphi Industries, Inc.,* 783 F.2d 743, 749-750 (8th Cir. 1986) *cert den.,* 476 U.S. 1141, 106 S.Ct. 2249 (1986).

De Shen has offered no proof that the arbitration panel refused to hear evidence pertinent and material to the controversy. In fact, the truth is that the Panel did all it could to ensure that De Shen had a full opportunity to present his case. For example, the Panel allowed the arbitration to go forward despite the fact that De Shen had produced no documents whatsoever to TD Waterhouse. *See, Appellee's Appendix,* Tab 11. The Panel allowed De Shen to amend his Statement of Claim to include potentially defamatory claims assailing the veracity of counsel and raising procedural issues, which should have properly been the subject of a Motion to Compel. *See, Appellant's Appendix, Tab 11* and *Appellee's Appendix,* Tab 9. In addition, the Panel allowed De Shen to present evidence on all of the issues raised in his Statement of Claim and Amended Statement of Claim. The Panel heard all of testimony offered by the parties, which specifically included testimony regarding "137 transactions

on PTUS, which were executed between 10:23:39 to 12:04:28 of March 7, 2000".

The Panel did rule on evidentiary issues. The Panel's decisions on those issues should be afforded the greatest deference by this Court. The Panel also ruled on all issues raised by De Shen in his Statement of Claim and Amended Statement of Claim. The Panel was entitled to render a decision without providing the parties with its reasoning. De Shen fails to meet his burden to show that the Panel refused to hear evidence pertinent and material to the controversy.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, TD Waterhouse respectfully requests that the judgment of the District Court denying De Shen's Motion to vacate and allowing TD Waterhouse's Motion to Confirm should be affirmed.

Dated: July 28, 2003

Pete S. Michaels

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APPENDICES 3

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT

No. 03-1415, No. 03-1478

Plaintiff and Appellant: De Shen	)	
	)	Trade Fraud on March 7, 2000.
VS.	)	Civil Action No. 00-11190-WGY
Defendant and Appellee: TD Waterhouse Investor Service, Inc)	)	Appeal Nos. 03-1415, 03-1478

Aug. 25, 2003

REPLY BRIEF OF PLAINTIFF
(Appellant\Cross-Appellee)

On appeal from U.S. District Court, District of Massachusetts

APPEARANCES:

De Shen
11 Summer Ave
Malden, MA 02148

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JURISDICTIONAL STATEMENT

Bill of Right should be applied.
All people are created equal.
Pursuant to 15 U.S.C.A. §78a, Fairness is the Basic principle of stock trading.
According to FAA Section 10, the Arbitration award should be vacated. This case should be reopened on the Court with Juries.

STATEMENT OF THE ISSUES

1. Did Mr. William Young err in knowing there were some conflict interests, but still ordering this case to be judged by arbitration? (See Addendum 02)

2. Did Mr. William Young err in knowing due to conflict interests, there were Arbitration Management Frauds during the arbitration, but not investigating and punishing the Arbitration Management Fraud? (See Addendum 03, 07, 08, 09)

3. Did Mr. William Young err in knowing due to the conflict interests, there were Arbitration Management Frauds, and the Arbitrators did not make fair arbitration, but still confirming the Arbitration Award? (See Addendum 07, 08)

4. Did Mr. William Young err in against the common sense, against 15 U.S.C.A. §78a, denying that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness? (See Addendum 07)

5. Did Mr. William Young err in knowing that the judgment should be based on facts, but denying the Plaintiff compel the Defendant to present case related critical data to the Court? (See Addendum 04)

6. Did Mr. William Young err in denying having a hearing in Oct. 7, 2002's Court ruling? Did Mr. William Young err in denying providing reasoning for his ruling in the Oct. 20, 2002's Court ruling? (See Addendum 05, 06)

7. Did Mr. William Young err in denying the Plaintiff's motion to 'Request Ms. Kelly Davis To Testimony on the Court'? (See Addendum 09)

8. Did Mr. William Young err in denying the Plaintiff's motion to 'To Add NASD Dispute Resolution, Inc to Defendant List of This Case'? (See Addendum 09)

9. This case is so simple, so obvious, however, the Arbitration made a wrong arbitration conclusion, Mr. William Young confirmed this wrong arbitration result. Is there any factors of 'race discrimination against Asia American' influenced this case?

10. Should Mr. William Young uphold the US Constitution? Should the lawyer of the Defendant, who denying the US Constitution, be punished? Should Mr. William Young study the new law passed by Congress and Senate, signed by President, and uphold those new laws? (See Addendum 07, Appendix 33)

11. Should NASD Arbitration Administer Ms. Green who conducted two Arbitration Management Frauds be punished?

12. Should the Defendant and its lawyer's lying under the Oath be punished?

13. Should the Defendant preventing its customers to present case related Market Data to judges and Courts be punished?

14. Should the Defendant's trade fraud be punished?

15. Should the Defendant cheating and insulting customer be punished?

16. Should the Defendant cheating SEC be punished?

17. Should the Defendant failed to provide case related critical information be punished?

18. Should the Defendant's hiring lawyer to invade the Plaintiff's privacy be punished?

STATEMENT OF THE CASE

In this case, the Plaintiff exposed the Defendant's trade fraud, the arbitration management fraud, the arbitration panel's unfair judgment, and the Mr. William Young's misjudgment.
The Plaintiff once said, "I am holding a great flag, a flag of justice; a flag of fair; a flag of 'All people are created equal'" (See Appendix 12). The Plaintiff hopes that our judges should uphold the same flag.

STATEMENT OF THE FACTS

On March 7, 2000, a trade fraud happened. The Market Recap (See Appendix 01) of March 7, 2000 had clearly indicated that it is the Defendant's mistake. After many times phone calls between the Plaintiff and the Defendant, the Defendant did not commit its mistake. Hence, a law suite was filed (See Appendix 05) under the suggestion of the lawyer of the week of the Framingham Court. The Defendant requested to handle this case by arbitration. However, the Plaintiff believe that the customers have the freedom right to choose whether to solve this case by arbitration or by court according to the Bill Of Right. Judge Young held a conference with the Plaintiff and

the Defendant. The judge informed both sides that this case should go through arbitration first. However, if the Plaintiff feels that the result is not proper, or there is any item cannot be arbitrated, the judge would like to continue handling this case on the court.

When the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by Arbitration. On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by NASD arbitration (See Appendix 03, 06). In this motion, the Plaintiff requested this case should be handled by the District Court according to the Bill Of Right. However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution.

Although the Plaintiff worried about that there might be some conflict interests issues by going through the arbitration, the Plaintiff decided to follow the judge's order to seriously go through the arbitration first. The Arbitration Statement of Claim was submitted on July 26, 2001 (See Appendix 08). The arbitration hearing held on June 20, 2002.

As predicted, due to the conflict interest, **the arbitration management frauds happened**, and the award of arbitration is extremely unfair (See Appendix 09, 10, 14). It unfairly dismissed the Plaintiff's claim in the entirety. **Every item in the Plaintiff's Statement of Claim was not be arbitrated! There is no any conclusion from the arbitrators on each item of the Plaintiff's**

Statement of Claim. Of cause, there is no any reasoning on how to get those conclusions!
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath was not punished.

Due to the conflict interests, when organizing the arbitration panel, the arbitration administrator forged the arbitration panel. After the arbitration, the arbitration administrator modified the hearing tape.

Considering that Mr. William Young promised that if the arbitrators do not arbitrate some of the items in the Plaintiff's Complaint, the Plaintiff could come back to the Court (See Appendix 04), the Plaintiff submitted a motion to request to re-open this case in the District Court on Aug. 17, 2002 (See Appendix 17, 18). In this motion and the cover letter, the Plaintiff reported the unfair arbitration result, including that many items are not arbitrated at all. The Plaintiff also reported the Arbitration Management Frauds to the Court. However, **Mr. William Young broken his promise**, and denied this motion (See Appendix 04, 07, and 20).

Considering that Judgment should base on facts instead of prejudice, the entire arbitration is baseless since until now the Defendant has not submitted the case related critical trading data yet. Hence, the

Plaintiff submitted a motion to "Compel The Production Of Documents" on Aug. 29, 2002(See Appendix 19). However, Mr. William Young ignored that the fact that due to Conflict Interests, the arbitration result is extremely unfair, and denied the Plaintiff's motion (See Appendix 21).

Considering that the Court denied the Plaintiff's motions might be all based on a wrong assumption that the arbitration conducted a fair resolution. The Plaintiff submitted the third motion (See Appendix 22) on Sep. 29, 2002 to request a hearing, so that the Plaintiff can explain to the Court why the arbitration result is extremely unfair. A good judge should listen to the people. However, Mr. William Young even denied this basic requirement on Oct. 7, 2002 (See Appendix 23).

The Plaintiff was really surprised about Mr. William Young's ruling on Oct. 7, 2002. Hence, the Plaintiff submitted a motion to "Requesting the reason of court ruling on Oct. 7, 2002" (See Appendix 24). Unfortunately, the Plaintiff even cannot get the reasoning from the court. Mr. William Young was even unable to provide any reasoning (i.e. according to which law(s)) about his ruling (See Appendix 25).

The Plaintiff has to request the Transcript of the conference of Nov. 14, 2000, on which, Mr. William Young promised to the Plaintiff that the Plaintiff can come back to Court if the arbitration result is unfair or some items in the Complaint are not arbitrated. On Nov. 4, 2002, the Plaintiff received a copy of the Transcript (See Appendix 04).

Since the arbitration administrator edited the arbitration hearing tapes and denied to provide a true copy of arbitration hearing tapes. The Plaintiff submitted a motion to "Compel NASD to Provide True Copy Of Hearing Tape Of Case 01-03697" on Nov. 16, 2002 (See Appendix 26). The original hearing tapes are four tapes according to Ms. Green. The edited tapes are three tapes (See Appendix 16). However, Mr. William Young even denied punishing the arbitration administrator's criminal actions. The Plaintiff's motion was denied.

According to Mr. William Young's word on the deny letter, the Plaintiff submitted a motion to "Request Vacation of the Arbitration Award on Case NASD No. 01-03697" (See Appendix 27). Finally, Mr. William Young agreed to have a hearing on this issue. The Plaintiff saw a glimpse of hope that the justice might be fulfilled on this case by the hearing. The hearing was held on Feb 6, 2003.

Unfortunately, Mr. William Young did not make a fair judgment on this hearing (See Appendix 28). (1) Mr. William Young claimed this case is "a serious one". However, Mr. William Young did not handle this case seriously. Mr. William Young did not investigate the arbitration management frauds. Also, he did not investigate on the trade fraud. Judgment should be based on the fact; however, Mr. William Young did not request the Defendant providing the case related critical data. (2) Mr. William Young ignored the arbitration management fraud on forging the arbitration panel list, claimed, "If you get a biased arbitrator, they won." (3) Mr. William Young ignored the arbitration management fraud on 'cooking' the

hearing tape, and asked the silly question "Suppose that is true, what does that show?". "Falsifying records" is against the Congress and Senate passed new law and the President's speech (See Appendix 33), Mr. Suzanne Green's bad action has breached the people's trust and abused NASD's power. This criminal action should be punished. However, Mr. William Young did not uphold Congress and Senate passed new law, and did not punish Mr. Suzanne Green's criminal action. (4) Mr. William Young even against the law of 15 U.S.C.A. §78a, challenged the fairness of stock trading, deny that "First come, first serve" should be one of the criteria of fairness in stock trading. (5) Mr. William Young ignored the arbitration management fraud, and claim that "Arbitration is second-class justice", so that no matter the arbitration administrator made how serious criminal action, the arbitration result has to be confirmed. According to Mr. William Young's logic, the arbitration administrator is just like the Emperor or Empress, who can do any criminal actions as his/her will, and cannot be punished.

SUMMARY OF ARGUMENT

According to the Bill of Right, due to the conflict interests, this case should be handled by the District Court from the beginning. Ordering this case to be handled by NASD arbitration is one misjudgment.

The District Court should investigate the arbitration management frauds and punish those arbitration management frauds.

Started from Aug. 17, 2002, the Plaintiff submitted six motions in order to vacate the unfair arbitration award, and re-open this case in the Court, the Defendant unreasonably claim that "the Plaintiff did not submit motion to vacate the arbitration award within the time allowed by law" is mistakenly explained Federal Arbitration Act.
The unfair arbitration result should be vacated.

The Defendant's failure to execute customer's order should be punished;
The Defendant's cheating and insulting customer should be punished;
The Defendant's cheating SEC should be punished;
The Defendant's lying under the oath should be punished;
The Defendant failed to provide case related critical information should be punished;
The Defendant's invading the Plaintiff's privacy should be punished;
The Defendant's blocking customer's on-line account should be punished.

Mr. William Young should study and uphold the new law, which passed by Congress and Senate, and signed by the President.

Mr. William Young should not against the common sense, should not against 15 U.S.C.A. §78a, should not deny that the securities trading should be fair, and 'First come, first serve' should be one of the basic criteria for the trading fairness.

ARGUMENT

I. The Defendant mistakenly explained the law

In the Defendant's Brief, it argues (See Defendant's Brief, page 6):
"De Shen failed to file the Motion to Vacate within the time allowed by law". The Defendant quoted one statement from Section 12 of the Federal Arbitration Act as following:
"Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered …"
Then the Defendant claims, "De Shen filed the Motion to Vacate on December 16, 2002 (see, Appellant's Appendix, Tab 25); nearly five-months after the NASD filed and delivered the Award and well past the three-month deadline imposed by the Federal Arbitration Act."

Actually, the Plaintiff submitted the first motion and a cover letter to vacate, modify, or correct the arbitration award and re-open this case on the District Court on Aug. 16, 2002, within ONE month after the award is delivered (See Appendix 17, 18)! And the Plaintiff continually submitted SIX motions in order to vacate, modify, or correct the arbitration award and re-open this case on the District Court(See Appendix 17, 18, 19, 22, 24, 26, 27). The Plaintiff has to ask the Defendant, does "a motion submitted within ONE month after the award is delivered" belong to "timely" or "untimely"? When the Defendant says, "Many of the issues raised by De Shen are untimely"

(See Plaintiff's Brief, line 15 – 17, page 5), did the Defendant really read the Plaintiff's first motion and its cover letter? Actually, most issues were raised in the Plaintiff's first motion to vacate the Arbitration Award (See Appendix 17, 18).

Yes, this first motion and its cover letter to vacate, modify, or correct the arbitration award is with the title of "Motion: Plaintiff strongly request to re-open this case". The plaintiff believes "re-open" means vacate the unfair arbitration award, and re-handle this case on the District Court. Maybe the Defendant requests the Plaintiff to put a word "vacate" in the title of the motion. However, FAA does not define the detail on how to write a motion's title. FAA does not define that a motion to vacate, modify, or correct an award should have a title which includes a word "vacate". To understand a motion, you should read the substantial content of the motion. The Defendant once again tries to play the word game on this serious issue. It tries to mistakenly explain the FAA rule from "a motion to vacate, modify, or correct an award" to "a motion with a title includes a word 'vacate', 'modify', or 'correct' an award". But, the above two rules are not identical. The Plaintiff wonders whether the lawyer of the Defendant are qualified as lawyers. This type of mistakenly explaining FAA rule should not be tolerant! This type of mistakenly explaining FAA rule should not come from a qualified lawyer.

On this issue, Mr. William Young's judgment is correct. Mr. William Young's reasoning is "the only reason to reopen a case after arbitration is either to confirm or vacate the award."

The Plaintiff would like to quote the Plaintiff's cover letter of Aug 16, 2002 as following: (See Appendix 18 for full text.)

<START OF QUOTE>

According to the Honorable Judge Young's statement on July 2, 2001, the plaintiff seriously went through the arbitration with the defendant from July 26, 2001 to July 20, 2002. As predict, due to the conflict interest, NASD was unable to fairly make item-by-item judgment on this case.

Justice judgment should base on fair examination of facts.

However, the defendant rejected to provide the case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. The plaintiff strongly requests the honorable judge to compel the defendant to provide the critical case related document requested by the plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".

Justice judgment should base on the principle of "All People are created equal".

However, the defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the defendant's willing, the three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The defendant's failure to execute customer's order was not punished;

The defendant's cheating and insulting customer was not punished;
The defendant's cheating SEC was not punished;
The defendant and its lawyer's lying under the oath were not punished;
The defendant failed to provide case related critical information was not punished;
The defendant's hiring lawyer to invade the Plaintiff's privacy was not punished;
In general, the defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

During the selecting arbitrators procedure, the administrator of NASD Arbitration, Ms. Green lied and unfairly composed a Panel, which is in favor of the defendant.

After hearing, after many times of the plaintiff requesting on the hearing tapes, the administrator of NASD Arbitration, Ms. Green finally deliver to the plaintiff two copies of the hearing tapes, in which, there are many contents are missed. Some panel member's speech, which obviously bias in favor of the defendant, are erased from the tapes. Ms. Green might think that, by this way, she could help the defendant win the game. However, her IQ is too low! Her actions just like an old story – "A person put a slogan 'There is no 300 once Silver here' above the place where he hided 300 once Silver". Without the judgment in the court, Ms. Green's action has already proved that this arbitration was unfairly processed by the arbitration panel. Until now, Ms. Green is still unwilling to provide the "Exact" copy of the original hearing tape. A copy of tapes edited by the NASD will

be present to this court. The plaintiff strongly requests the honorable judge to compel the NASD to provide exact copies of the original hearing tape to the Plaintiff and the court.

On July 2, 2001, our Honorable Judge Young replied to the Plaintiff's motion: " ***To reopen, this case must first proceed through arbitration****."*

The plaintiff hereby, present a motion, "Motion --- Plaintiff strongly request to re-open this case" to this court. The plaintiff pray to the Honorable Judge in this Court, in order to punish the defendant's series of wrong doing, this case should be reopened and the investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

File attached with this letter

No. 20020816 – 1 Motion, Plaintiff strongly request to re-open this case
No. 20020816 – 2 Amendment of Arbitration Statement of Claim
No. 20020816 – 3 Opening Statement
No. 20020816 – 4 Response to Defendant's Motion to Compel Its Referenced Matter
No. 20020816 – 5 Respondent's Amended Statement of Answer
No. 20020816 – 6 First Request For Document and Information to Defendant

No. 20020816 – 7 Respondent's Response to the Claimant's First Request for Production of Documents and Information
No. 20020816 – 8 Respondent's Motion to Compel the production of Documents
No. 20020816 – 9 Respondent's First Request for Document and Information to Claimant
No. 20020816 – 10 Evidence of Defendant Preventing Customer to Present Data to Honorable Judge in the Court
No. 20020816 – 11 Arbitration Causal Challenge
No. 20020816 – 12 NASD Associate VP's Cover Up Letter
No. 20020816 – 13 NASD Ms. Green's Award Information Letter
No. 20020816 – 14 NASD Award Document
No. 20020816 – 15 Emails Regarding to the Hearing Tape
<END OF QUOTE>

If anyone read the Plaintiff's motion and the above cover letter of Aug. 16, 2002, he/she should immediately get the conclusion that this motion is for vacating the unfair arbitration award and request to reopen this case on the District Court. The Defendant mistakenly explained 'the Federal Arbitration Act'. The Defendant should be punished for its mistakenly explanation of 'the Federal Arbitration Act'.

II. The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel

On page 3 of the Defendant's Brief, the Defendant wrote: "TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules." The Defendant lied again on this issue.

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001.
After the Dec. 24, 2001 deadline, the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

The Plaintiff strongly request Ms. Kelly Davis to testimony on the court. **Until today (Aug 25, 2003), Ms. Kelly Davis has not lied on this issue yet.**

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.
On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, the lawyer for the Defendant lied.
Those liars lied during the Arbitration period. Some of those liars lied on the District Court. Their evil actions constituted the fraud mentioned on page 10-11 of the Plaintiff's "Brief of Appellant".

If the Honorable Judges in this US Court of Appeals are talent enough, this fraud should not be very

difficult to be verified. The Plaintiff request the Defendant commit its evil action on telling lies on this submission ranking form issue before the verification by the judges in this US Court of Appeal. If the Defendant does not commit its evil action on telling lies until the judges figured out the truth, then the penalty should be much higher then Defendant commits its evil actions earlier.

III. The Defendant is failed to deny the arbitration hearing tape fraud

The Defendant wrote on page 4-5 of its Brief: "De Shen complained to the NASD that he did not received all of the tapes (De Shen received three (3) tapes and claims that four (4) existed)."

The above statement is not true. The truth is: Ms. Suzanne Green informed the Plaintiff that there are four hearing-tapes (after July 18, 2002). After the Plaintiff complained that some content on the arbitration hearing are missed on the copied and edited hearing tapes; And the copied and edited tapes are only three tapes, which is different with what Ms. Suzanne Green said before that there are total four hearing tapes; Only after then, Ms. Suzanne Green started to change her words and start to claim that there are only three hearing tapes. The details are as following:

After many times requesting for the arbitration hearing tapes, the Plaintiff received Ms. Suzanne Green's message from the telephone answer machine. Ms. Suzanne Green informed the Plaintiff: "There are

total four hearing tapes. $15.00 for each tape. If you need two copies of the hearing tapes, you need to pay $120.00 before the tapes can be shipped to you." The Plaintiff sent a Fleet Bank Money Order of $120.00 to NASD on July 27, 2002, quickly after received and confirmed Ms. Suzanne Green's telephone message (See Appendix 16).

If there are only three hearing tapes for this arbitration case, then:

(1) Why after more than 30 days of the arbitration hearing, Ms. Suzanne Green informed the Plaintiff that there are four hearing tapes?
(2) Why Ms. Suzanne Green informed the Plaintiff that the payment is $120.00?
(3) Why Ms. Suzanne Green did not correct her 'mistake' after she received the Plaintiff's $120.00 payment before the Plaintiff complaint this issue on Aug 10, 2002 (Within more than 50 days of the Arbitration hearing)?
(4) Has the $30.00 refund check from NASD on Aug. 12, 2002 (See Appendix 17) proved that there is inconsistency information provided by Ms. Suzanne Green?
(5) Did Ms. Suzanne Green lie on "four tapes" version? Or did Ms. Suzanne Green lie on "three tapes" version?

On both the Feb. 6, 2003's district court hearing, and the Plaintiff's Brief, the Plaintiff mentioned that on the Arbitration hearing of June 20, 2002, 'The Arbitrator Chair Richard D. Jordan openly protects the Defendant. He said loudly, "It is trade secret!"'. The Defendant neither denied this fact on the Feb. 6, 2003's district court hearing. Nor denied this fact in

the Defendant's Brief. However, this statement is erased from the hearing tape.

Ms. Suzanne Green directed and involved the two arbitration management frauds. Her evil actions has breached people's trust and abused NASD's power.

The Plaintiff strongly request Ms. Suzanne Green and three arbitrators testimony on this Court. The Plaintiff would like to verify that whether those three arbitrators are liars or not.

IV. **Conflict interest should be avoided; The Court should uphold the Constitution; Derek Anderson openly denies the Constitution should be punished.**

In the Defendant's second argument, (page 10-12 of the Defendant's Brief), the Defendant is trying to prove that "De Shen was bound by his TD Waterhouse new account application, which required him to arbitrate his dispute".

Yes. In most cases, the dispute between parties should be arbitrated if there is an agreement according to Mr. William Young's explanation on the Nov. 14, 2000's District Court Conference. The Defendant wrote two pages, and list many cases. However, it proved nothing. Actually, the Plaintiff agreed with Mr. William Young's order to go to Arbitration first on the Nov. 14, 2000's District Court Conference (See Appendix 04).

The critical issue is: NASD cannot arbitrate itself! Conflict interest should be avoided!

After Nov. 14, 2000's District Court Conference, when the Plaintiff preparing for the Arbitration Claim, the Plaintiff found that there is one issue, which will conduct the conflict interest if this case handled by NASD Arbitration (See count 8 of Appendix 05, Appendix 06, and Appendix 07).

Just a few weeks after the Plaintiff submitted the "Market Recap" data to the District Court, the Defendant suddenly requested its customers to sign three new agreements (See Appendix 03). In each of the agreement, there is at least one place request customer do not submit Market Data to any other person or entity (See page 2 count 5, page 4 count 2, and page 7 line 12-14 of Appendix 03). Of cause, the "any other person and entity" includes the judges and the Courts. The Defendant's purpose of these three agreements is to prevent its customers submitting critical case related data to the court. In the cover letter of these three new agreements, the Defendant wrote: "…, and **National Association Securities Dealers (NASD) require that you accept their respective subscriber agreements** before we can grant you continued access to webBroker, …" (See Line 3-7, Page 1 of Appendix 03). **These three agreements are the Defendant's elaborately planned tricks. If you signed these three agreements, then you cannot submit "Market Recap" data to the Court. If you against these three agreements, then the Defendant will take advantage of this conflict interest issue in the NASD arbitration hearing.**

On Feb. 3, 2001, the Plaintiff filed a motion, inform the Court that there is a conflict interest issue if this case handled by NASD arbitration (See count 7, 8, 9, Page 3 of Appendix 06).

<START OF QUOTE>

"On the Nov 14's conference, our Honorable Judge Young suggests that the Plaintiff should go through Arbitration first. If the problems cannot be solved or the problems were not solved properly, then our Honorable Judge will accept to handle this case with justice in this court. The Plaintiff agreed to follow our Honorable Judge's suggestion. The Plaintiff rewrote a Complaint for Arbitration (See Attached). **However, after rewriting the Complaint, the Plaintiff discovered that there is a conflict interest if this case goes through arbitration.** Mr. Sullivan informed me that I might bring arbitration before either the NASD or NYSE. The count 8 in the new Complaint document might be closely related to NASD and NYSE. With my understanding, NASD or NYSE cannot arbitrate itself since there is a conflict interest. Hence, the Plaintiff would like to present this point to our Honorable Judge. After considering avoiding the conflict interest, the Plaintiff strongly requests this case to be re-opened and to be handled directly through this court.

.....

I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the Defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

"

<END OF QUOTE>

However, the Court denied this motion (See Appendix 07). The Plaintiff believes this ruling was incorrect. It is violated the Constitution. In the count 8 of the Plaintiff's Complaint, the Plaintiff pointed out that one NASD's contract tries to prevent Defendant's customer presenting valid data evidence to the honorable Judge in the court. NASD cannot arbitrate itself. The conflict interest should be avoided. With the conflict interest, the arbitration will be not fair. Further, Freedom of Speech is included in the Bill of Rights (the first ten amendments of US Constitution). According to the Bill of Rights, people should have the right to choose whether they want to handle their case by arbitration or by Court.

Due to the Conflict Interest issue, NASD cannot arbitrate itself. The Plaintiff does believe that the Plaintiff has the right to chose solve this issue by the Court with juries. The Bill of Right grants and guarantees the Plaintiff's right. The Bill of Right is the most important authority. The Constitution is the most important authority. **The Defendant denied the authority of the Bill of Right** when the Defendant claims "De Shen offers no authority" (See the last line in Page 11 of the Defendant's Brief). **The Defendant denied that the US Constitution is most fundamental and important law** when the Defendant claims "De Shen's assertion fails as a matter of law." (See second line in Page 12 of the Defendant's Brief)

The Plaintiff believes that this Court should uphold the US Constitution. Anyone who tries to

deny the Constitution should be seriously punished. As a lawyer, Mr. Derek Anderson openly denies the Constitution. The Plaintiff wonders whether Mr. Derek Anderson is qualified as a lawyer?

V. Arbitration Management Fraud should be punished.

(a) Fraud in organizing the Arbitration Panel

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all the arbitrators should come from the Plaintiff selected arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel from Ms. Suzanne Green, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told the Plaintiff that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the Plaintiff had to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the Plaintiff sent to the President of NASD, the Plaintiff wrote:
"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the Defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter (See Appendix 10). In her letter, **Ms. Clancy provided a third version** of this timing:
"Respondent's ranking form was sent to us by facsimile, and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001." People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001*

deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?

Until now, who was lying, who was cover up, is still a riddle. The Plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. Until now, Ms. Kelly Davis has not lie yet. ***The Plaintiff request Ms. Kelly Davis to testimony on the court.*** If Ms. Kelly Davis could tell the truth on the court, the Plaintiff request the Court protect Ms. Kelly Davis, avoid the revenges from NASD. If she does not tell the truth on the court, then this issue will be covered up. The Plaintiff wonders whether the Court is talent enough to expose the truth.

(b) Fraud on 'Cooking' Hearing Tape

(Forgery is a Criminal Behavior)

The Plaintiff received the hearing tape of the arbitration (NASD No. 01-03697) on Aug. 10, 2002. When the Plaintiff listen to the tape, the Plaintiff discovered that many content of the arbitration hearing are not in the tape.

On the arbitration, the arbitrators openly bias in favor of the Defendant. For example, when the Plaintiff asked the Defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects

the Defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said:
"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government can ensure that those who breach the trust of the American people are punished."

The arbitrators helped the Defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It

is Trade Secret". The arbitrators' action and the Defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the Defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The Plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said: **"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."**

The Plaintiff believes that the Defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Lawyers and Security Workers to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said: **"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."**

The Plaintiff believes that it is the time, on this court, to expose the Defendant's trade fraud and NASD's frauds on "cooking the hearing tape" and "forging the arbitration panel".

The Plaintiff respectively requests the court:

(I) ***Order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the Plaintiff and to this court***

(II) ***Order the Arbitrators and Ms. Green testimony in this Court***

(III) ***Order the Defendant to provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the Plaintiff and to this court.***

(IV) ***Help arranging Ms. Kelly Davis to testimony on the court.***

The Plaintiff believes that this court, as one part of the US government, has the guts and power to make the above orders.

VI. The Arbitration Award should be vacated. This case should be handled in the court with Juries.

(A) Section 10 of Federal Arbitration Act

Sec. 10. - Same; vacation; grounds; rehearing

(a)

In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

(1)

Where the award was procured by corruption, fraud, or undue means.

(2)

Where there was evident partiality or corruption in the arbitrators, or either of them.

(3)

Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any

other misbehavior by which the rights of any party have been prejudiced.

(4)

Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5)

Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(B) This case matched three criteria for vacating the award

a. The unfair arbitration award is conducted and procured by these two frauds.

During the Arbitration from July 26, 2001 to July 20, 2002, as predict, due to the conflict interest, there are two arbitration management frauds occurred. The Defendant involved the first fraud. And the Defendant is unable to deny the second fraud. The unfair arbitration

award is conducted and procured by these two frauds.

b. The arbitrators are obviously partial to the Defendant.

One evident partiality in Arbitrator is as following:
When the Plaintiff Analyze on Failure to Execute Stock Order issue, the Defendant repeatedly claimed: "This is speculation". One arbitrator (who sit near the Plaintiff side) chime in with the Defendant, he said: "We all know that!"
The Defendant cannot deny this is one evident partiality!

The most evident partiality to the Defendant is the Arbitration Result. The Defendant made so many mistakes; The Market Recap precisely indicated that it is Defendant's mistake; The Defendant failed to provide the critical data to prove its own argument "Market orders receive execution priority"; all those facts should conduct an award, which should seriously punish the Defendant. However, the Arbitration Panel unfairly dismissed the Plaintiff's claim in the entirety.

c. Justice judgment should base on fair examination of facts.

The Market Recap (See Appendix 01) has clearly proved that it is the Defendant's

mistake on "Failure to execute" in this case. The Defendant claimed in its "Respondent's Statement of Answer": "Market order receive execution priority" (Page 5 in Appellee's Appendix, Also see Respondent's amended statement of answer, page 37 of the Appellee's Appendix, line 7). It is the Defendant's burden to prove its point. In order to prove its point, the Defendant should prove that all the sell orders of those 170 transactions are Market orders. Hence the Defendant should provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap). However, the Defendant rejected to provide this case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. Under the Umbrella of the evident partiality arbitrators, until now, the Defendant failed to prove that all the sell orders of those 170 transactions are Market orders. And as long as one sell order of those 170 transactions is NOT Market order, the Defendant's argument is automatically defeated. ***According to statistics theory, it is almost impossible that all the sell orders of those 170 transactions are Market orders.*** If the arbitrators understand statistics theory, they can reach the conclusion immediately that the Defendant is lying and the Defendant is responsible for the failure to execute the Plaintiff's order. If the arbitrators don't understand the statistics theory, then they

should ask the Defendant to provide detailed information about the order type of the sell orders of those 170 transactions to get the right conclusion. Under the Umbrella of the evident partiality arbitrators, the Defendant has not provided the case related critical information (evidence pertinent and material to the controversy) until today. ***The Plaintiff strongly requests the Court compel the Defendant to provide the critical case related document requested by the Plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".***

d. Justice judgment should base on the principle of "All People are created equal".

However, the Defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the Defendant's willing. The three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The Defendant's failure to execute customer's order was not punished;
The Defendant's cheating and insulting customer was not punished;
The Defendant's cheating SEC was not punished;
The Defendant's lying under the oath were not punished;

The Defendant failed to provide case related critical information was not punished;
The Defendant's invading the Plaintiff's privacy was not punished;
In general, the Defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

e. Fairness should be the basic principle for stock trading

"First come, first serve" should be one of the basic rules for stock trading. The Plaintiff asked many experts on stock trading (include some arbitrators and lawyers) the following question:
"If there are 10 same limit orders to sell 5000 shares stock XYZ at price $2.00, Person A placed order on Feb. 23, 2000, while others placed the same order on March 7, 2000. When Market bid price exceeded $2.00, which order should be executed first?" **All the answer are same: "Person A's order should be executed first because that order placed first."**

Mr. William Young challenging this basic stock-trading rule on the hearing of Feb 6, 2003 is incorrect.

f. Arbitration Result is NOT always correct

Mr. William Young claimed, "Arbitration is second-class justice" (Feb 6, 2003, Motion

Hearing Transcript, Page 10, Line 25). According to this assumption, Mr. William Young blindly confirmed the Arbitration award. Now, I start to understand why Ms. Suzanne Green dares to forge the Arbitration Panel. Now, I start to understand why Ms. Suzanne Green dares to "cook" the Hearing Tape. Now, I start to understand why the Arbitrators dare to help the Defendant to hide the unfair trading Data. It is because they have the "Umbrella" of "Arbitration is second-class justice". With this "Umbrella", No matter how many criminal actions they did, no one will punish them! However, people have to ask Mr. William Young: If you do not work hard to investigate each case, if you do not have talent to distinguish who is good, who is bad, who did criminal actions, if you do not uphold justice, do not punish the criminal actions, why people need you? People need you is because Arbitration Result is NOT always correct, especially there is conflict interests involved. Unfair Arbitration result should be corrected by the Court. If our Mr. William Young does not correct those Arbitration Mistakes, then, our Mr. William Young is neglecting his duties.

According to our Mr. William Young's logic, then, the civil court will be the "first justice". Hence, our Mr. William Young will be always right since he is the chief Judge in this court. Hence, there will be no need to have Appeal Court and Supreme Court. Fortunately, US People do not trust our Mr. William Young's

logic. Mr. William Young might make mistakes. Mr. William Young's mistakes should be corrected by the Appeal Court and/or Supreme Court. Anyone should obey the law. Ms. Suzanne Green's Arbitration Management frauds should be punished. TD Water House's trade fraud should be punished.

CONCLUSION OF THE REPLY BRIEF

(I) Due to conflict interest, two frauds happened. The Defendant involved one fraud. The Defendant is unable to deny another fraud. Those two frauds conducted the unfair arbitration award. According to Section 10 of the Federal Arbitration Act, this unfair arbitration award should be vacated. This case should be reopened on the Court with Juries.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 4

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Sep 29, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On Punishing the Frauds
Of the Defendant and NASD

(I) NASD's fraud on cooking hearing tapes is proved

As predict, the Defendant was unable to file the Reply Brief of Appellee/Cross-Appellant.

Yes. The Plaintiff's Reply Brief (of Appellant/Cross-Appellee) is VERY, VERY, VERY DIFFICULT for the Defendant to reply. If the Defendant submits its Reply

Brief of Appellee/Cross-Appellant, then, it either automatically commits the NASD Arbitration Administrator's fraud on cooking the arbitration hearing tape, or it has to make more lies.

In the Plaintiff's Reply Brief (of Appellant/Cross-Appellee), (VI) (B) (2), the Plaintiff wrote:

> ***(2) The arbitrators are obviously** partial **to the Defendant.***
>
> *One evident partiality in Arbitrator is as following:*
> *When the Plaintiff Analyze on Failure to Execute Stock Order issue, the Defendant repeatedly claimed: "This is speculation". One arbitrator (who sit near the Plaintiff side) chime in with the Defendant, he said: "We all know that!"*
> *The Defendant cannot deny this is one evident partiality!*

The arbitrator (who sit near the Plaintiff side) only spoke a few times. And when he said, "We all know that!" after the Defendant repeatedly claimed: "This is speculation", the arbitrator's voice was very loud. So, no one should forget what he said.

If the Defendant claims that what the arbitrator's statement "We all know that!" is not partial to the Defendant, then the Defendant is automatically committing that the arbitrator (who sit near the Plaintiff

side) did indeed say, "We all know that!" on the arbitration hearing of June 20, 2002. However, this statement was erased from the arbitration hearing tapes, which were delivered to the Plaintiff.

If the Defendant claims that the arbitrator (who sit near the Plaintiff side) did not say that statement on the arbitration hearing of June 20, 2002, then the Defendant is making more lies.

According to the logic analysis, "NOT DENY" implies "COMMIT".

(1) The Defendant did not submit its Reply Brief of Appellee/Cross-Appellant.

(2) Hence, the Defendant did not deny the fact of 'the arbitrator (who sit near the Plaintiff side) did indeed say, "We all know that!" on the arbitration hearing of June 20, 2002'.

(3) However, this statement was erased from the arbitration hearing tapes, which were delivered to the Plaintiff.

(4) Hence, NASD arbitration administrator's fraud on cooking hearing tapes is proved!

(II) The Frauds of the Defendant and NASD should be punished

The fact of 'the Defendant was unable to submit its Reply Brief of Appellee/Cross-Appellant' also proved that the Defendant is unable to deny the facts written in the Plaintiff (Appellant/Cross-Appellee)'s Reply Brief:

(1) The Defendant mistakenly explained the law;

(2) The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel;

(3) The Defendant is failed to deny the arbitration hearing tape fraud;

(4) Conflict interest should be avoided; The Court should uphold the Constitution;

(5) Arbitration Management Fraud should be punished;

Hence, the Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 5

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Nov. 3, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Request to arrange Ms. Kelly Davis to testimony on this court

(I) The fraud on selecting arbitration panel is proved

In the Plaintiff's Reply Brief (of Appellant/Cross-Appellee) (II), the Plaintiff wrote:

II. The Defendant lie on submission ranking form issue; The Defendant involved the fraud on selecting arbitration panel

On page 3 of the Defendant's Brief, the Defendant wrote: "TD Waterhouse submitted its ranking of potential arbitrators within the time allowed by NASD DR rules." The Defendant lied again on this issue.

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001.
After the Dec. 24, 2001 deadline, the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. Ms. Kelly Davis informed me that NASD had not received the Defendant (Respondent)'s list yet. And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

The Plaintiff strongly request Ms. Kelly Davis to testimony on the court. *Until today (Aug 25, 2003), Ms. Kelly Davis has not lied on this issue yet.*

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.
On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, the lawyer for Mr. Derek Anderson lied.
Those liars lied during the Arbitration period. Some of those liars lied on the District Court. Their evil actions constituted the fraud mentioned

on page 10-11 of the Plaintiff's "Brief of Appellant".

If the Honorable Judges in this US Court of Appeals are talent enough, this fraud should not be very difficult to be verified. The Plaintiff request the Defendant commit its evil action on telling lies on this submission ranking form issue before the verification by the judges in this US Court of Appeal. If the Defendant does not commit its evil action on telling lies until the judges figured out the truth, then the penalty should be much higher then Defendant commits its evil actions earlier.

The Defendant did not submit the Reply Brief to deny that Ms. Suzanne Green, Ms. Elizabeth R. Clancy and the Defendant had all lied on this issue. The Defendant did not deny that *the Defendant directly involved the fraud* ***on selecting arbitration panel.***

Not deny implies commit. The Defendant and NASD's fraud on selecting arbitration panel is proved.

The Plaintiff start to investigate the ranking form submitting issue on Feb. 18, 2002. On Feb 24, 2002, the Plaintiff submitted the Arbitration Causal Challenge by email. In the same email, the Plaintiff asked Ms. Green the following simple questions:

========== *Simple Questions* ==========

I was heard that the defendant did not delivered their list of arbitrators even by Dec 26, 2001. Hence, I would like to ask the following

questions for fully understand how this panel list was decided:

(i) By what type of the mail that the defendant delivered their list of arbitrators?

(a) Certified Mail;

(b) Fed. Express.

(ii) What is the Postmark date on the defendant's mail for delivering their list of Arbitrators? Can I get a copy of the Envelop of the defendant's mail with the Postmark date?

(iii) By which date that your office received the defendant's mail regarding to the list of Arbitrators.

(iv) How the panel list was finally decided in detail?

On Feb. 28, 2002, the Plaintiff re-sent the above simple questions to
Ms. Suzanne Green.

On March 1, 2002, Ms. Suzanne Green was still un-able to answer the above simple questions, but she wrote in her reply email:

"it is the policy of this office to allow the opposing party to responds to such motion."

Hence, on March 1, 2002 (Same day after received Ms. Suzanne Green's email), the Plaintiff forwarded those simple questions to the Defendant.

However, the Defendant was also unable to reply those simple questions.

Since both the Defendant and Ms. Suzanne Green can not answer the Plaintiff's simple questions, the Plaintiff

had to send this issue to NASD President Linda D. Fienberg.

On April 2002, the Plaintiff received one letter, dated as March 26, 2002 (See Appendix 10 of Plaintiff's Brief Appendix of Appellant, also see Appendix 4 of Appellee's Appendix, the Appellee's copy machine is better), from Ms. Elizabeth R. Clancy. In this letter, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, openly lied. Ms. Elizabeth R. Clancy claimed that Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

As analyzed by the Plaintiff (See page 20 of the Plaintiff's Reply Brief of Appellant):

> People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?*

On April 2002, after received Ms. Elizabeth R. Clancy's letter, the Plaintiff received the Defendant's letter, which is dated as March 27, 2002. In this letter, the Defendant start to claim that it submitted the ranking form on Dec. 11, 2001.

Both Ms. Elizabeth R. Clancy and the Defendant included one forged document of the Defendant's ranking form, which is dated as Dec. 11, 2001.

Currently, there are three versions of the Defendant's submission of Arbitration ranking form.
(1) Ms. Kelly Davis: The Defendant did not submit its Arbitration ranking form before the Dec. 24, 2001 deadline;
(2) Ms. Suzanne Green: The Defendant submitted its Arbitration ranking form on the Dec. 24, 2001.
(3) Ms. Elizabeth R. Clancy: Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

As Plaintiff stated before: The Defendant did not submit the Reply Brief to deny that Ms. Suzanne Green, Ms. Elizabeth R. Clancy and the Defendant had all lied on this issue. The Defendant did not deny that the Defendant directly involved the fraud on selecting arbitration panel.
Not deny implies commit. The Defendant and NASD's fraud on selecting arbitration panel is proved.
In the case this Court is still unable to determine that whether this fraud is verified or not, the Plaintiff strongly request this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to several conversations with Ms. Kelly Davis before, the Plaintiff believe that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Nov. 3rd, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) The Frauds of the Defendant and NASD should be punished

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives

for Reform on Corporate Responsibility" (See Page 2 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

On the Plaintiff's Sep 29, 2003's Motion, the Plaintiff proved the NASD's fraud on cooking (editing) hearing tapes. Until today, (Nov. 3, 2003), the Defendant has not denied this fraud. Hence, it further confirmed that "the NASD's fraud on cooking (editing) hearing tapes" is really happened.

On this motion, the Plaintiff proved the Defendant and the NASD's fraud on Arbitration Panel Selection Issue.

The penalty to one organization should be very serious, if the organization knowing the law but violating the law.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.
(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be $1,000,000.00.
(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC,

lie under OATH, etc should be punished. The minimum punishment should be $1,000,000.00.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 6

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Nos. 03-1415; 03-1478

DE SHEN,
Plaintiff, Appellant\Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.
Defendant, Appellee\Cross-Appellant.

No. 03-1478

MEMORANDUM OF TD WATERHOUSE INVESTOR SERVICES, INC IN OPPOSITION TO DE SHEN'S MOTION TO TAKE THE TESTIMONY OF KELLY DAVIS OF THE NASD

TD Waterhouse Investor Services, Inc ("Appellee") submits this memorandum in opposition ("Memorandum") to De Shen's ("Appellant") motion requesting that this Court take the testimony of Kelly Davis of the NASD. In addition to this Memorandum, Appellee submits herewith the affidavit of Derek C. Anderson, Esq.

I. Background

Appellant requests that the court take the testimony of Ms. Kelly Davis, an employee of the National Association of Securities Dealers, Inc ("NASD"). On

appeal, Appellant argues that the Order of the District Court denying Appellant's Motion to vacate the arbitration award should be reversed. Appellant argues, among other things, that the underlying arbitration award should be vacated under Section 10 of the Federal Arbitration Act ("FAA"). As grounds for his argument, Appellant alleges that Appellee failed to submit its ranking of potential arbitrators within the time allowed by the arbitration rules of the NASD. Appellant contends that Appellee's failure in this regard constitutes "fraud in organizing the arbitration panel".[1] Appellant now requests that this Court take the testimony of Kelly Davis of the NASD to substantiate his allegations.

II. Argument

This Court should deny Appellant's Motion for the reasons that such testimony is not allowed by the federal rules of appellate procedure and that the record on appeal has already been established. Rule 10 of the federal rules of appellate procedure limit the record to "the original papers and exhibits filed in the district court, the transcript of proceedings, and a certified copy of the docket entries delivered by the district clerk". U.S.C.A. Fed. Rules App. Proc. R. 10. Attempts to supplement the record should be disregarded by the Court since the

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[1] Appellee pointed out in its Brief that this alleged "fraud" does not materially relate to an issue in arbitration as is required, and therefore cannot be grounds to vacate an arbitration award under Section 10 of the FAA. *See e.g. LaFarge Conseils Et Etudies, S.A. v Kaiser Cement& Gypsum Corp.* 791 F.2d 1334, 1339 (9th Cir. 1986) (citing *Dogherra v. SafewayStores, Inc.*, 679 F.2d 1293 (9th Cir. 1982) cert den. 459 U.S. 990. 74 L.Ed. 2d 386, 103 S. Ct. 346(1982)); see also *Bonar v. Dean Witter Reynolds, Inc.*, 835 F. 2d 1378. 1383 (11th Cir. 1988) (citing *Dogherra*,supra) (Appellee's Brief. P.15)

Appellant had every opportunity in the district court to present whatever evidence he thought was relevant to the issues at hand. *See e.g. Rosen v. Lawson-Hemphill, Inc*,. 549 F. 2d 205, 206 (1st Cir. 1986). The burden is on the Appellant to provide the Court with all material evidence. *See e.g. Hayes v. Consolidated Service Corp.*, 517 F.2d 564, 566 (1st Cir. 1975). The declaration of a witness which was never filed or submitted to the District Court cannot be part to the record on appeal. See e.g. *Kirshner v. Uniden Corp. of America*, 842 F.2d 1074, 1077 (9th Cir. 1988).

Here, Appellant seeks to have the Court take the testimony of a NASD employee. It is indisputable that testimony was not before the District Court when it rendered its Order denying Appellant's Motion to vacate the arbitration award. The testimony clearly is not part of the record. Appellant's Motion should be denied.[2]

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[2] After receiving Appellant's Motion, counsel searched Appellee's facsimile transmitting its rankings of potential arbitrators. *See Affidavit of Derek C. Anderson, Esq.* Appellee's letter to the NASD transmitting its rankings of arbitrators was dated December 11, 2001. *Id.* The letter was delivered to the NASD via facsimile and overnight mail. *Id.* The facsimile confirmation sheet indicates that the NASD received the letter on December 11, 2001, well before the December 24, 2001 deadline. *Id.* This information corroborates Ms. Clancy's (of the NASD) March 26, 2002 correspondence regarding the selection arbitrators, and completely undermines Appellant's theory of fraud in organizing the arbitration panel". *See Appellee's Appendix*. Tab 4.

III. Conclusion

For all of the foregoing reasons, TD Waterhouse respectfully requests that the Court deny Appellant's Motion.

TD WATERHOUSE INVESTOR SERVICES, INC.

By its attorneys,

s/ Derek C. Anderson
Derek C. Anderson
Pete S. Michaels
MURPHY & MICHAELS, LLP
One Liberty Square
Boston, Massachusetts 02109
(617) 350-7700

Dated: November 24, 2003

APPENDICES 7

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Nos. 03-1415; 03-1478

DE SHEN,
Plaintiff, Appellant\Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.
Defendant, Appellee\Cross-Appellant.

No. 03-1478

AFFIDAVIT OF DEREK C. ANDERSON

I, Derek C. Anderson, do hereby depose and state the following:

1. I, along with Pete S. Michaels, am the attorney of record for Appellee TD Waterhouse Investor Service, Inc. (T.D. Waterhouse).

2. After receiving Appellant's Motion, I searched TD Waterhouse's file and retrieved the facsimile transmitting TD Waterhouse's rankings of potential arbitrators. The cover letter to the NASD transmitting TD Waterhouse's rankings of arbitrators was dated December 11, 2001. The letter was delivered to the NASD via facsimile and overnight mail. The facsimile confirmation sheet indicates that the NASD

received the letter on December 11, 2001, well before the December 24, 2001 NASD deadline.

3. This information corroborates Ms. Clancy's March 26, 2002 correspondence regarding the selection of arbitrators. See Appellee's Appendix, Tab 4.

4. This information is not part of the record before the Court. Upon the request of the Court, we would be glad to provide the Court with this correspondence.

Sworn under the pains and penalties of perjury this 21 day of November 2003.

s/ Derek C. Anderson
Derek C. Anderson

APPENDICES 8

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Nov. 24, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Request Double Penalty To The Defendant For Its Continually Telling Lie

(I) The Defendant Continually Tells Lies

The Plaintiff received Mr. Derek C. Anderson's reply letter of Nov. 21, 2003. This letter is a response of the Plaintiff's Nov. 3rd's Motion.
This letter proved that the Defendant continually tells LIE until now.

Mr. Derek C. Anderson wrote:

I enclose the correspondence to the NASD enclosing TD Waterhouse's rankings of arbitrators. You will see that the cover letter is dated December 11, 2001 and notes that the rankings were delivered via facsimile and via overnight delivery (Optima). I have also enclosed the confirmation indicating that the facsimile was sent on December 11, 2001, well before the December 24, 2001 deadline. This information corroborates Ms. Clancy's letter to you (See Appellee's Appendix, Tab 4).

From the Defendant's attached files, you will see both the cover letter and FAX COVER SHEET are addressed to Ms. Kelly Davis, NASD Dispute Resolution, Inc.

If those documents were not forged, then, Ms. Kelly Davis *would have received* ***the Defendant's ARBITRATOR RANKING FORM*** *well before the deadline of Dec. 24, 2001.*

However Ms. Kelly Davis informed the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001 at least two times.

Hence, the Defendant forged those documents and continually lie is proved!

The Plaintiff and Ms. Kelly Davis had at least two conversations which were focused on whether the Defendant submitted its arbitrator ranking form on time.

After the deadline of Dec. 24, 2001, ***the Plaintiff called Ms. Kelly Davis and asked her whether the Defendant had submitted its arbitrator ranking form.*** Ms. Kelly Davis told the Plaintiff that the Respondent had not submitted its

arbitrator ranking form yet. She informed the Plaintiff that NASD would process the selection of arbitrator panel without waiting for the Respondent's arbitrator ranking form.

According to Arbitration Rule, if the Defendant (Respondent) did not submit its arbitrator ranking form before the deadline, all the arbitrators in the panel should be selected from the arbitrator ranking form submitted by the Plaintiff (Claimant). However, *when the Plaintiff received the arbitrator panel list decided by NASD,* ***the Plaintiff discovered that only one arbitrator was selected from the arbitrator ranking form submitted by the Plaintiff.*** *Hence, the Plaintiff called Ms. Kelly Davis again.* ***The Plaintiff asked Ms. Kelly Davis, "You told me that the Defendant did not submit its arbitrator ranking form before the deadline. Hence all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff. Why only one arbitrator which ranked number 4 in the arbitrator ranking form submitted by the Plaintiff was selected in the Panel." Ms. Kelly Davis replied to the Plaintiff that:*** "Yes. The Respondent did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001.You are right that all the arbitrators should be selected from the arbitrator ranking form submitted by you. However, in the case if some arbitrators, which you selected, do not want to arbitrate this case, if there are not enough arbitrators available from your ranking form, then, NASD will select the rest arbitrator(s) for this panel***". She suggested me contact with Ms. Suzanne Green. The Plaintiff called Ms. Suzanne Green. Ms. Suzanne Green lied to the Plaintiff. She said: "The Respondent submitted its arbitrator ranking form on Dec. 24, 2001, the last day of the deadline". Ms. Suzanne Green told the Plaintiff that she would ask Ms. Kelly Davis talk to me together. However, Ms. Kelly Davis did not join Ms. Suzanne Green to lie to the***

Plaintiff. The Plaintiff also called one arbitrator who was selected in the Plaintiff's arbitrator ranking form. He reply to the Plaintiff that no one from NASD Dispute Resolution, Inc contacted with him on this case.

According to above conversation with Ms. Kelly Davis, the Defendant forged those documents and continually lie is proved.

The Plaintiff strongly requests this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to the above conversations with Ms. Kelly Davis, the Plaintiff believes that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Nov. 24, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) The Defendant continually lie should be DOUBLE PUNISHED

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility" (See Page 2 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

Considering the Defendant continually tells lies, the Plaintiff request double penalty to the Defendant.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be **$2,000,000.00**.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be **$2,000,000.00**.

(IV) If the total punishment exceeded $1,000,000.00, as Promised, the Plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

APPENDICES 9

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Dec. 1, 2003

Plaintiff (Appellant/Cross – Appellee)'s MOTION On Requesting Further Double Penalty To The Defendant For It Hire Lawyers to Lie in Affidavit

(I) The Defendant Hire Lawyers to Lie in the Affidavit

The Plaintiff received the Defendant's attorney Mr. Derek C. Anderson's Affidavit on Nov. 25, 2003. **However, Mr. Derek C. Anderson's Affidavit is an obvious perjury**.

Mr. Derek C. Anderson wrote in the Affidavit:

After receiving Appellant's Motion. I searched TD Waterhouse's file and retrieved the facsimile transmitting TD Waterhouse's rankings of potential arbitrators. The cover letter to the NASD transmitting TD Waterhouse's rankings of arbitrators was dated December 11, 2001. The letter was delivered to the NASD via facsimile and overnight mail. The facsimile confirmation sheet indicates that the NASD received the letter on December 11, 2001, well before the December 24, 2001 NASD deadline.

Mr. Derek C. Anderson's Affidavit is an obvious perjury.

Lets use reductio ad absurdum ***approach to prove the above statement:***

Both the Defendant's cover letter and FAX COVER SHEET related to arbitrator ranking form submission are addressed to Ms. Kelly Davis, NASD Dispute Resolution, Inc.

Lets make the following assumption, and call it "Assumption X":
Assumption X: Suppose those Defendant's documents were not forged, suppose Mr. Derek C. Anderson's Affidavit is not a perjury. Ms. Kelly Davis had received the Defendant's arbitrator ranking form *well before the deadline of Dec. 24, 2001.*

However:
(A) After the deadline of Dec. 24, 2001, ***the Plaintiff called Ms. Kelly Davis and asked her whether the Defendant had submitted its arbitrator ranking form.*** Ms. Kelly Davis told the Plaintiff that the Respondent had not submitted its arbitrator ranking form yet. She informed the Plaintiff that

NASD would process the selection of arbitrator panel without waiting for the Respondent's arbitrator ranking form.

People have to ask the Defendant, WHY Ms. Kelly Davis would like to inform the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001, if she received the Defendant's ARBITRATOR RANKING FORM well before the deadline of Dec. 24, 2001?

(B) ***According to Arbitration Rule, if the Defendant (Respondent) did not submit its arbitrator ranking form before the deadline, all the arbitrators in the panel should be selected from the arbitrator ranking form submitted by the Plaintiff (Claimant). However,*** *when the Plaintiff received the arbitrator panel list decided by NASD,* ***the Plaintiff discovered that only one arbitrator was selected from the arbitrator ranking form submitted by the Plaintiff.*** *Hence, the Plaintiff called Ms. Kelly Davis again.* ***The Plaintiff asked Ms. Kelly Davis, "You told me that the Defendant did not submit its arbitrator ranking form before the deadline. Hence all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff. Why only one arbitrator which ranked number 4 in the arbitrator ranking form submitted by the Plaintiff was selected in the Panel." Ms. Kelly Davis replied to the Plaintiff that:*** "Yes. The Respondent did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001. You are right that all the arbitrators should be selected from the arbitrator ranking form submitted by you. However, in the case if some arbitrators, which you selected, do not want to arbitrate this case, if there are not enough arbitrators available from your ranking form, then, NASD will select the rest arbitrator(s) for this panel".

People have to ask the Defendant, WHY Ms. Kelly Davis would like to confirm to the Plaintiff that the Defendant did not submit its arbitrator ranking form before the deadline of Dec. 24, 2001? WHY Ms. Kelly Davis would like to confirm to the Plaintiff that all the arbitrators in the arbitration panel should be selected from the arbitrator ranking form submitted by the Plaintiff unless there are not enough arbitrators available from the arbitrator ranking form submitted by the Plaintiff?

(C) When the Plaintiff called Ms. Suzanne Green. WHY Ms. Suzanne Green lied to the Plaintiff, "The Respondent submitted its arbitrator ranking form on Dec. 24, 2001, the last day of the deadline"?

(D) The Plaintiff started to investigate the ranking form submitting issue on Feb. 18, 2002. On Feb 24, 2002, the Plaintiff submitted the Arbitration Causal Challenge by email. In the same email, the Plaintiff asked Ms. Green the following simple questions:

========== *Simple Questions* ==========

I was heard that the defendant did not delivered their list of arbitrators even by Dec 26, 2001. Hence, I would like to ask the following
questions for fully understand how this panel list was decided:

(i) By what type of the mail that the defendant delivered their list of arbitrators?
(a) Certified Mail;
(b) Fed. Express.

(ii) What is the Postmark date on the defendant's mail for delivering their list of Arbitrators? Can I get a copy of the Envelop of the defendant's mail with the Postmark date?

(iii) By which date that your office received the defendant's mail regarding to the list of Arbitrators.

(iv) How the panel list was finally decided in detail?

On Feb. 28, 2002, the Plaintiff re-sent the above simple questions to
Ms. Suzanne Green.

On March 1, 2002, Ms. Suzanne Green was still un-able to answer the above simple questions, but she wrote in her reply email:
"it is the policy of this office to allow the opposing party to responds to such motion."

People have to ask the Defendant, if she received the Defendant's ARBITRATOR RANKING FORM well before the deadline of Dec. 24, 2001, WHY Ms. Suzanne Green was un-able to answer the above simple questions by Feb. 24, 2002(?), by Feb. 28, 2002(?), even by March 1, 2002?

(E) On March 1, 2002, the Plaintiff forwarded those simple questions to the Defendant.
However, the Defendant was also unable to reply those simple questions.

People have to ask the Defendant, if the Defendant's arbitrator ranking form was delivered to the NASD via facsimile and overnight mail on Dec. 11, 2001, if Mr. Kelly Davis received the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001, WHY the Defendant was unable to answer those simple questions before Ms.

Elizabeth R. Clancy made the cover-up solution on March 26, 2002?

(F) On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, openly lied in her letter. Ms. Elizabeth R. Clancy claimed that Respondent's (the Defendant) ranking form was sent to NASD by facsimile and received by NASD on Dec. 11, 2001, with original copy arriving on Dec. 12, 2001.

People have to ask Ms. Clancy, December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, **WHY** the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?

From the above six issues, the consequences conducted by "Assumption X" are either self-contradiction or implausibility. ***With the "Assumption X", all the above questions cannot be answered.***

Hence, the "Assumption X" is patently untenable.

Hence, the "Assumption X" is incorrect.

Hence, those Defendant's documents related to arbitrators ranking form submission were forged.

Hence, *"Mr. Derek C. Anderson's Affidavit is an obvious perjury" is proved.*

By using reductio ad absurdum **approach,** ***without Ms. Kelly Davis's testimony, the Plaintiff has already successfully proved the Defendant's and NASD's frauds on the arbitrators ranking form submission.***

On this issue, the NASD Arbitration Administrator Ms. Suzanne Green lied.

On this issue, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, lied.
On this issue, Mr. Derek Anderson, Mr. Pete S. Michaels, the lawyers for the Defendant, lied and continually lying, even lied in their Affidavit.

Those Liars constructed the Fraud of Arbitrators Ranking Form Submission Issue. The Defendant should be punished on this Fraud.
The Defendant hiring Lawyers to lie in the Affidavit should be seriously and double punished.

The Plaintiff still strongly requests this Court to arrange Ms. Kelly Davis to testimony on this court. Ms. Kelly Davis was the person handling this issue at that time. According to the conversations with Ms. Kelly Davis, the Plaintiff believes that Ms. Kelly Davis will speak out the truth under the Court's protection. Until today (Dec. 1, 2003), Ms. Kelly Davis did not lie to the Plaintiff directly.

(II) Why does the Defendant panic?
This is another simple question:
Assumption: Suppose those Defendant's documents were not forged, suppose Mr. Derek C. Anderson's Affidavit is not a perjury. Suppose Ms. Kelly Davis had received the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001.

Then, WHY does the Defendant panic? WHY does the Defendant submit documents again and again to against Ms. Kelly Davis' testimony? According to the above Assumption, the Defendant should request and support Ms. Kelly Davis' testimony, right?

The only possible conclusion is:

The above assumption is incorrect. The reason why the Defendant panic and strongly against Ms. Kelly Davis' testimony in this Court is:
Those Defendant's documents related to Arbitrators Ranking Form submission were forged. Mr. Derek C. Anderson's Affidavit is a perjury. Ms. Kelly did not receive the Defendant's arbitrator ranking form well before the deadline of Dec. 24, 2001.

(III) The Defendant is trying to escape from the Justice Judgment in this Appeals Court

(A) The Defendant mistakenly explained the Law
The Defendant wrote in its Memorandum of Nov. 24, 2003:
This Court should deny Appellant's Motion for the reasons that such testimony is not allowed by the federal rules of appellate procedure and that the record on appeal has already been established. Rule 10 of the federal rules of appellate procedure limit the record to "the original papers and exhibits filed in the district court, the transcript of proceedings, and a certified copy of the docket entries delivered by the district clerk"

The Defendant mistakenly explained the law in its Brief for Defendant. Now, it mistakenly explained the law again.
Rule 10 of the federal rules of appellate procedure is defined for:
(a) Composition of the Record on Appeal
(b) The Transcript of Proceedings

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.
(d) Agreed Statement as the Record on Appeal
(e) Correction or Modification of the Record
Rule 10 of the federal rules of appellate procedure (See Appendix in this Motion) does not define whether the Appellant should or should not ask case closely related witness to expose and confirm the Appellee's fraud which is list in the record.
Rule 10 of the federal rules of appellate does not define whether the Appellant should or should not ask case closely related witness to testimony in order to further confirm the Appellant's statement which is written in the record.

The Defendant mistakenly explains the law should be punished.

(B) The Defendant's Fraud on Ranking Form is not a new record

The Defendant wrote in its Memorandum of Nov. 24, 2003:
Attempts to supplement the record should be disregarded by the Court ...

The Defendant's Fraud on Arbitrator Ranking Form Submission is not a new record. It is recorded in many documents, which submitted to the District Court. The Defendant can find those documents in the Brief Appendix of Appellant as following:
(1) 09. Arbitration Causal Challenge;
(2) 10. Ms. Elizabeth R. Clancy's Letter;

(3) 17. Motion: Plaintiff strongly request to re-open this case

(This is the first Motion to vacate the unfair arbitration result.

This Motion is submitted to the District Court within one month

after the Plaintiff received the unfair arbitration result.

Count 8 of this Motion described this Fraud in detail.)

(4) 18. Plaintiff Motion's Cover Letter;

Requesting Ms. Kelly Davis to testimony on the court is only for confirming that the Fraud listed in the record was indeed happened.
The Defendant's Fraud should not be disregarded. The law should punish the Defendant's Fraud. The best practice for the Defendant is commits its Fraud and other Mistakes ASAP. Any continual lies and cheatings will conduct more serious penalties. Any Defendant's attempts for escaping from the Justice Judgment will be failed.

(C) Requesting Ms. Kelly Davis testimony is not a new record

The Defendant wrote in its Memorandum of Nov. 24, 2003:
The declaration of a witness which was never filed or submitted to the District Court cannot be part of the record on appeal.

The Defendant's above statement is worthless, because it ignored the following records in the Brief Appendix of Appellant:

(1) 29. Plaintiff's MOTION To Request Ms. Kelly Davis To Testimony on the Court

(2) 32. Court Ruling on Plaintiff's Feb. 17, 2003 Motion and April 17, 2003 Motion.

The Plaintiff submitted a Motion to Request Ms. Kelly Davis To Testimony on the Court on Feb. 17, 2003. However, the District Court Clerk claimed that she did not receive that Motion. Hence, the Plaintiff re-submitted the same Motion again by certified mail immediately.

Mr. William Young did not deny this Motion until this case was submitted to the Court of Appears. The Plaintiff's Motion to Request Ms. Kelly Davis To Testimony on the District Court on Feb. 17, 2003 is one pending Motion when the Appeal Notice was submitted.

In the Court Ruling on this Motion (See Appendix 32 in the Brief Appendix of Appellant), Mr. William Young used the words " In view of appeal, ...", it might indicate that Mr. William Young might consider to ask Ms. Kelly Davis to testimony on the District Court.

By now, we have proved that the Argument in Defendant's Memorandum is worthless. There is no law support Defendant's Memorandum. All the Defendant's statements are baseless.

(IV) The Defendant Hire Lawyers to Lie in their Affidavit should be further DOUBLE PUNISHED

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility" (See Page 2 of

Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

On the same speech, (See Page 3 of Appendix 33 of the Brief Appendix of Appellant), President Bush said:
"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

Considering the Defendant hired lawyers "bravely" telling lies in its Affidavit, the Plaintiff request further double penalty to the Defendant.

The Plaintiff (Appellant/Cross-Appellee) respectively requests the US Court of Appears to make the following actions:

(I) The unfair Arbitration Award should be vacated.

(II) NASD's Arbitration Management Frauds should be punished. The minimum punishment should be **$4,000,000.00**.

(III) The Defendant (TD Water House Investor Service, Inc)'s Trade fraud, followed by its cheating customer, insult customer, cheating SEC, lie under OATH, etc should be punished. The minimum punishment should be **$4,000,000.00**.

(IV) As Promised, the Plaintiff is planning to use at least 80% of the awarded **$8,000,000.00** to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer

technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Security Workers, Lawyers and Judges to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

Appendix

Rule 10, 11, 12 in FEDERAL RULES OF APPELLATE PROCEDURE

Rule 10. The Record on Appeal

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) The Transcript of Proceedings.

(1) **Appellant's Duty to Order.** Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or
(B) file a certificate stating that no transcript will be ordered.
(2) **Unsupported Finding or Conclusion.** If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.
(3) **Partial Transcript.** Unless the entire transcript is ordered:
(A) the appellant must—within the 10 days provided in Rule 10(b)(1)—file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;
(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and
(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.
(4) **Payment.** At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.
(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a

statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the courts resolution of the issues. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The dis-

trict clerk must then send it to the circuit clerk within the time

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provided by Rule 11. A copy of the agreed statement may be filed
in place of the appendix required by Rule 30.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July
1, 1986; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993;
Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 11. Forwarding the Record

(a) Appellant's Duty. An appellant filing a notice of appeal must

comply with Rule 10(b) and must do whatever else is necessary to
enable the clerk to assemble and forward the record. If there are
multiple appeals from a judgment or order, the clerk must for-
ward a single record.

(b) Duties of Reporter and District Clerk.

(1) **Reporter's Duty to Prepare and File a Transcript.** The re-
porter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporters receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) **District Clerk's Duty to Forward.** When the record is com-
plete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the

record designated for omission by local rule of the court of ap-

peals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) Retaining the Record Temporarily in the District Court for Use in Preparing the Appeal. The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) [Abrogated.]

(e) Retaining the Record by Court Order.

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending,

subject, however, to call by the court of appeals.
(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and
the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.
(f) Retaining Parts of the Record in the District Court by Stipula-
tion of the Parties. The parties may agree by written stipulation
filed in the district court that designated parts of the record be re-
tained in the district court subject to call by the court of appeals
or request by a party. The parts of the record so designated re-
main a part of the record on appeal.
(g) Record for a Preliminary Motion in the Court of Appeals. If,
before the record is forwarded, a party makes any of the following
motions in the court of appeals:
□ for dismissal;
□ for release;
□ for a stay pending appeal;
□ for additional security on the bond on appeal or on a supersedeas bond; or
□ for any other intermediate order—
the district clerk must send the court of appeals any parts of the
record designated by any party.
(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July
1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998.)

Rule 12. Docketing the Appeal; Filing a Representation Statement;
Filing the Record

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing a Representation Statement. Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) Filing the Record, Partial Record, or Certificate. Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 1, 1979, eff. Aug. 1, 1979; Mar. 10, 1986, eff. July

1, 1986; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 24, 1998, eff. Dec. 1, 1998.)

TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

Rule 13. Review of a Decision of the Tax Court

APPENDICES 10

United States Court of Appeals
For the First Circuit

Nos. 03-1415
03-1478

DE SHEN,
Plaintiff, Appellant/Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee/Cross-Appellant.

JUDGMENT
Entered: February 5, 2004

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed. See Loc. R. 27(c).

De Shen's various motions requesting that this court hold a hearing with regarding to one of his claims of fraud and order sanctions against T.D. Waterhouse for "[c]ontinually [t]elling [l]ie[s]" are denied.

By the Court:

RICHARD CUSHING DONOVAN
Richard Cushing Donovan, Clark

APPENDICES 11

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

Feb 22, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On Mistakes of Judgment of Feb. 5 2004

The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;

(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony.

The three judges, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya made the judgment. However, they do not even have the courage to sign their names on the Judgment. This proved that the Judges themselves do not believe that they did a right thing.

Any misjudgment should be reviewed and re-judged by the people of USA, maybe further be reviewed and re-judged by the people in the world.

History will record all the judges who use their talents to make clear judgment for the people. Billions people will remember them.
History will also record those unqualified judges who frequently make misjudgments. Billions people will laugh at them.

In order to help the people to review and judge the JUDGMENT made by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya, the following questions are proposed for them to answer. They may answer these questions separately or answer these questions as a group. Do not answer these questions or deny this motion is also an answer. In this case, people will smell the bureaucracy characteristics from them.

Here are the questions that Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya needs to answer:
(1) Should Frauds be punished?

(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

(Note. The Plaintiff did not receive the JUDGMENT entered on Feb. 5, 2004 until the Plaintiff called the Court on Feb. 19, 2004. The Plaintiff wishes this type of issue will not happened again.)

APPENDICES 12

United States Court of Appeals
For the First Circuit

No. 03-1415

DE SHEN,
Plaintiff, Appellant/Cross-Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee/Cross-Appellant.

No. 03-1478

DE SHEN,
Plaintiff, Appellee,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellant.

Before
Campbell, Senior Circuit Judge,
Torruella and Selya, Circuit Judges.

ORDER OF COURT
Entered: April 6, 2004

The petition for rehearing is denied.

By the Court:

Richard Cushing Donovan, Clark

By: Mark R. SYSKA
Chief Deputy Clerk

[cc. De Shen, Pete S. Michaels, Esq. And Derek C. Anderson, Esq]

APPENDICES 13

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

April 12, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 2nd Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

On April 8, 2004, the Plaintiff received the response (to the Plaintiff's motion of Feb. 22, 2004) from the three judges, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya. (Note: this document did not put a date on the document. The postmark is April 6, 2004.)

The response includes only one sentence:
"The petition for rehearing is denied."

The Plaintiff has to ask Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya: You did not hold any hearing on this case yet, where is the word "rehearing" come from?

The response from Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya DID NOT denied the Plaintiff's statements of the following:

"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;
(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In the response, Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya did not answer the Plaintiff's basic questions in Plaintiff's Motion of Feb. 22, 2004. However, all those questions are required to be answered. If Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

APPENDICES 14

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

April 26, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 3rd Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

The Plaintiff asked the judges the basic questions in Plaintiff's Motion of Feb. 22, 2004.
However, more than two months passed, the judges are still unable to answer those basic questions. The Plaintiff has to ask the judges, are those basic questions really difficult for you to answer? Why you cannot answer those basic questions within the reasonable response time?

On April 13, 2004, Susan corrected the missing date issue on the Judge's response of April 6, 2004. Any correction on the mistake is welcomed. The Plaintiff is waiting for the judge's correction on their misjudgments of Feb. 5, 2004 and April 6, 2004.

A judge is Honorable if he/she can make correct judgments. However, judge is human. Any human can make mistake. Hence, a judge is also Honorable if he/she can correct his/her misjudgment. If a judge made a mistake, but refuse to correct his/her mistake, then People have to doubt whether that judge is qualified as a judge.

Regarding to the judges' response of April 6, 2004, which includes only one sentence:

"The petition for rehearing is denied."

The Plaintiff asked the judges: You did not hold any hearing on this case yet, where is the word "rehearing" come from? Until now, the judges have not answer this question yet.

Actually, judge Young also did not hear the frauds of Defendant and NASD completely. On the Feb.6, 2003's hearing, within the short 20 minutes, Judge Young did not make a hearing on the Frauds of TD Water House and NASD arbitration administrator. On the Feb.6, 2003's hearing, the main debate is focused on whether it is OK to reopen this case on the US District Court. And judge Young made correct judgment on this issue. Judge Young said: "Okay. I rule that his motion to reopen tolls the time …" (See page 6 of Addendum 07 in the Brief of Appellant) However, Judge Young's reasoning on the conclusion has defects. Judge Young said: " … because the only reason to reopen a case after arbitration is either to confirm or vacate the award." If

Judge Young read Plaintiff's motions carefully, he should understand that there is second reason to reopen this case. That is "The Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration should be punished."

This case started from a relatively minor issue (Trade Mistake). However, this case becomes a serious case due to the Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration. In the process of appeals in the US Court of Appeals of First Circuit, the Plaintiff has the opportunity to prove all those Frauds made by TD Water House and NASD arbitration administrator. By asking critical questions in the Reply Brief of Plaintiff, and the Defendant failed to submit its Reply Brief, the Plaintiff successfully proved the NASD arbitration administrator's Fraud on "cooking the arbitration hearing tape" (See Plaintiff's motion of Sep. 29, 2003). By requesting Ms. Kelly Davis testimony on this Court and by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved the "Fraud on selecting arbitration panel" made by TD Water House and NASD arbitration administrator; Also, by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved that the Defendant Hire Lawyers to Lie in Affidavit. (See Plaintiff's motions of Nov. 3, 2003 and Dec. 1, 2003). Judge Young did not hear all those facts.

Now, the essential issue of this case is: People against Frauds.
Our judges should stand with the People side, and punish the Frauds made by TD Water House and NASD arbitration administrator.

Due to both the US District Court and the US Court of Appears of First Circuit did not hold any hearing on the

Frauds made by TD Water House and NASD arbitration administrator, the Plaintiff respectively request the judges in this court to take one of the following actions:

(1) Hold a hearing with Juries on this Court to punish the Frauds made by TD Water House and NASD arbitration administrator;
(2) Or Order the US District Court hold a hearing with Juries to punish the Frauds made by TD Water House and NASD arbitration administrator.

The response from the judges on April 6, 2004 DID NOT denied the Plaintiff's statements of the following:
"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;
(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;
(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In this motion, Plaintiff would like to request the judges the 3rd time to answer the basic questions in Plaintiff's Motion of Feb. 22, 2004. All those questions are required to be answered. If the judges are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that judges in the US Court of Appeals needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya will be judged by the People. And also by the Supreme Court of USA.

APPENDICES 15

US COURT OF APPEALS
THE FIRST CIRCUIT

PLAINTIFF - Appellant/Cross - Appellee:)
De Shen) Appeals Nos. 03-1415, 03-1478
)
) Trade Fraud on March 7, 2000.
VS.)
) Civil Action No. 00-11190-WGY
)
DEFENDANT - Appellee/Cross - Appellant:)
TD Waterhouse Investor Service, Inc)

May 23, 2004

Plaintiff (Appellant/Cross – Appellee)'s MOTION
On 4th Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion

The Plaintiff asked the judges the basic questions in Plaintiff's Motion of Feb. 22, 2004.
However, more than THREE months passed, the judges are still unable to answer those basic questions. The Plaintiff has to ask the judges, are those basic questions really difficult for you to answer? Why you cannot answer those basic questions within the reasonable response time? The judges' answers of those Basic Questions need to be included in the "Opinions

Below" section of the writ of certiorari for the supreme court of the United States. If Levin H. Campbell, Juan R. Torruella, and Bruce M. Selya are not talent enough (or do not have courage) to answer those BASIC questions, then, is there any judge(s) in the US COURT OF APPEALS FOR THE FIRST CIRCUIT who is talent enough or has courage to answer those BASIC questions?

The Plaintiff is waiting for the judge's correction on their misjudgments of Feb. 5, 2004 and April 6, 2004.

A judge is Honorable if he/she can make correct judgments. However, judge is human. Any human can make mistake. Hence, a judge is also Honorable if he/she can correct his/her misjudgment. If a judge made a mistake, but refuse to correct his/her mistake, then People have to doubt whether that judge is qualified as a judge.

Regarding to the judges' response of April 6, 2004, which includes only one sentence:

"The petition for rehearing is denied."

The Plaintiff asked the judges: You did not hold any hearing on this case yet, where is the word "rehearing" come from? Until now, the judges have not answer this question yet. The judges in the United States Court of Appeals for the First Circuit need to provide the following information to the People:

On which date, by which judge(s) of the United States Court of Appeals for the First Circuit, held the **FIRST** hearing on this case?

So that People can understand where is the word "rehearing" coming from.

Actually, judge Young also did not hear the frauds of Defendant and NASD completely. On the Feb.6, 2003's hearing, within the short 20 minutes, Judge Young did not make a hearing on the Frauds of TD Water House and NASD arbitration administrator. On the Feb.6, 2003's hearing, the main debate is focused on whether it is OK to reopen this case on the US District Court. And judge Young made correct judgment on this issue. Judge Young said: "Okay. I rule that his motion to reopen tolls the time ..." (See page 6 of Addendum 07 in the Brief of Appellant) However, Judge Young's reasoning on the conclusion has defects. Judge Young said: " ... because the only reason to reopen a case after arbitration is either to confirm or vacate the award." If Judge Young read Plaintiff's motions carefully, he should understand that there is second reason to reopen this case. That is "The Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration should be punished."

This case started from a relatively minor issue (Trade Mistake). However, this case becomes a serious case due to the Frauds made by TD Water House and NASD arbitration administrator during and after the arbitration. In the process of appeals in the US Court of Appeals of First Circuit, the Plaintiff has the opportunity to prove all those Frauds made by TD Water House and NASD arbitration administrator. By asking critical questions in the Reply Brief of Plaintiff, and the Defendant failed to submit its Reply Brief, the Plaintiff successfully proved the NASD arbitration administrator's Fraud on "cooking the arbitration hearing tape" (See Plaintiff's motion of Sep. 29, 2003). By requesting Ms. Kelly Davis testimony on this Court and by using ***reductio ad absurdum*** approach, the Plaintiff successfully proved the "Fraud on selecting arbitration panel" made by TD Water House and NASD arbitration administrator; Also, by using

reductio ad absurdum approach, the Plaintiff successfully proved that the Defendant Hire Lawyers to Lie and Perjury in Affidavit. (See Plaintiff's motions of Nov. 3, 2003 and Dec. 1, 2003). Judge Young did not hear all those facts.

Now, the essential issue of this case is: People against Frauds.
Our judges should stand with the People side, and punish the Frauds made by TD Water House and NASD arbitration administrator.

Due to both the US District Court and the US Court of Appears of First Circuit did not hold any hearing on the Frauds made by TD Water House and NASD arbitration administrator, the Plaintiff respectively request the judges in this court to take one of the following actions:

(1) Hold a hearing with Juries on this Court to punish the Frauds made by TD Water House and NASD arbitration administrator;

(2) Or Order the US District Court hold a hearing with Juries to punish the Frauds made by TD Water House and NASD arbitration administrator.

The response from the judges on April 6, 2004 DID NOT denied the Plaintiff's statements of the following:
"The JUDGMENT entered on February 5, 2004 is clearly a mistake.

The JUDGMENT uses Loc. R. 27 (c) as its authority. However,

(1) Loc. R. 27 (c) does not grants the judges to do not punish the Fraud;

(2) Loc. R. 27 (c) does not grants the judges to do not investigate the Fraud;

(3) Justice is the Truth In Action. Loc. R. 27 (c) does not grants the judges to make the judgment without hearing the truth from Ms. Kelly Davis's testimony."

Hence, the Plaintiff requests this Court to take any necessary actions to correct the judgment mistake of February 5, 2004.

In this motion, Plaintiff would like to request the judges the 4th time to answer the basic questions in Plaintiff's Motion of Feb. 22, 2004. All those questions are required to be answered. If the judges are not talented enough (or do not have the courage) to answer those questions, then they have to openly commit their mistakes. A former apology is required.

Here are the questions that judges in the US Court of Appeals needs to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?
(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

The answer by the judges of the United States Court of Appeals for the First Circuit will be judged by the People. And also it will be judged by the Supreme Court of USA.

United States Court of Appeals
For the First Circuit

No. 03-1415
No. 03-1478

DE SHEN,
Plaintiff, Appellant,

v.

T.D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant, Appellee.

Before
Torruella, Circuit Judge,
Campbell, Senior Circuit Judge,
Selya, Circuit Judge.

ORDER OF COURT

Entered: June 18, 2004

Mandate was issued in this case on April 13, 2004, with the result that this case is no longer under judicial consideration. Construing petitioner's "Motions on 2nd, 3rd, and 4th Request the judges to answer the Basic Questions in Plaintiff's Feb. 22's Motion" as motions to recall mandate, the same are denied.

These appeals having been closed, the Clerk of Court is hereby directed not to accept any further filings in these cases (Docket Nos. 03-1415, 03-1478).

By the Court:

Richard Cushing Donovan, Clark

By: Mark R. SYSKA
Chief Deputy Clerk

[cc: De Shen, Pete S. Michaels, Esq. And Derek C. Anderson, Esq.]

Supreme Court, U.S.
FILED
04 381 JUL 1 2004
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court OF United States

De Shen Petitioner

vs.

T.D. Waterhouse Investor Service Respondent

On Petition For Writ Of Certiorari To

US Court Of Appeals For The First Circuit

SUPPLEMENTAL APPENDIX OF PETITION FOR WRIT OF CERTIORARI

De Shen

11 Summer Ave

Malden, MA 02148

(781) 324-3285

Aug 1, 2004

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Supplemental Appendix 1
Plaintiff's Complaint (June 1, 2000)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
v.	)	Trade Fraud on March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

COMPLAINT

Parties

1) The plaintiff is a resident of Framingham, Massachusetts.
2) The defendant TD Waterhouse Investor Service, Inc is a brokerage company; It is located at 100 Wall Street, New York, NY 10005

Jurisdiction

3) This court has jurisdiction over this matter pursuant to 15 U.S.C.A. §78a.
Fairness is the **Basic principle** of stock trading. Everyone should be fairly treated in the stock market regardless what race he/she is; regardless which market the stock is traded; regardless which country the stock is traded.

Facts

4) On March 7, 2000, a trade fraud is happened. On March 7, from 10:25:24 to 13:12:48, there are more than 170 times PTUS was traded at the prices beyond my order's limit price, however my order was not filled. [NOTE: I have an open order to sell 5000 shares PTUS stock at price of $2.00. The order number is XOB6072 (valid from Feb. 24 to April 23, 2000). The account number is 46334534. The

brokerage company is TD Waterhouse investor service, Inc.]

According to 15 U.S.C.A. §78a. "Securities Exchange Act of 1934", according to 15 U.S.C.A. §78b Necessity for regulation: "… transactions in Securities as commonly conducted upon Securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, …, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, …, and **to insure the maintenance of fair and honest markets in such transaction**"

The transaction mentioned in this count (4) is an **unfair transaction**. If you look at the time and sell list of PTUS on March 7, you will see that there are more than three hours, both BID and ASK prices are beyond $2.00 (NOT equal to, and ASK prices is greater than BID price). More than 170 transactions traded above $2.00 during this period.

TD Waterhouse staff told me that OTCBB is not regulated. However, according to 15 U.S.C.A. §78b, (Page 29) "Within preamble to this section declaring that security transactions as commonly conducted upon 'securities exchanges' and 'over-the-counter markets' are affected with national public interest, **the quoted words mean any security-transfer business wherein the business of marketing securities is conducted**." Thus, the unfair transaction in OTCBB shall not be tolerated also.

I believe I have the right to ask the defendant to commit the mistake or inside trade fraud. I, on this count of my complaint, pray for damages equal to three times of my losses: $2 * 5000 * 3 = $30,000.00.

5) TD Waterhouse was Cheating to customer.

According to 15 U.S.C.A. §78k-1 "National Market System for Securities; Securities Information Processors":
"(a)
(C) It is the public interest and appropriate for the protection of investors and maintenance of fair and orderly markets to assure –

(i) Economically efficient execution of securities transactions;

(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) The availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) The practicability of brokers executing investor's orders in the best market; and

(v) An opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph for investor's orders to be executed without the participation of a dealer."

It was so difficult for me to get the transaction information about PTUS on March 7 and 8, 2000.

After I discover the trading fraud on March 7, 2000, I called TD Waterhouse many times, asked for 'Time & Sells' for PTUS on March 7 and 8, 2000. However, on March 17, 2000, I only received a letter, which includes 'a list of bid/ask prices of PTUS on March 7 & March 8'.

Even from the bid/ask list, everyone can easily discover this trade fraud. So I decided to call TD Waterhouse to solve this trade fraud issue. The answers from TD Waterhouse Staffs are different. Someone said this is obviously a mistake, and this should be corrected easily. Someone said this is a mistake from market maker, I should complain to SEC. However, some one was not honest. He ignore the fact that there are many times both the bid and the ask for PTUS were above $2.00 (and the bid was less than the ask) on March 7, 2000. **He told me that the reason for my order not filled was because the bid price was above the ask price (What a liar!)**. At the beginning, he refused to send me the Time & Sells list. However, under my insistent demand, he finally agreed to send me the Time & Sells for PTUS on March 7, 2000 and March 8, 2000.

According to 15 U.S.C.A. §78b (Page 33):
"This chapter was designed to provide for regulation of securities exchanges and over-the-counter markets to prevent inequitable and unfair practices in such exchanges and markets.

Overall purpose of this chapter is to insure maintenance of fair and **honest** markets in securities transactions."

Cheating customer is unlawful! TD Waterhouse Investor Service, Inc should educate its employee to be honest in all transactions.

On April 3, 2000, I finally received the Time & Sells for PTUS of March 7 and March 8, 2000. And the fraud was finally proved. However, when I called TD Waterhouse, they told me they couldn't solve this problem for me because this was a mistake from the market maker.

I believe TD Waterhouse Investor Service, Inc should make apology to me, and guarantee do not tell lie again to customer. I, on this count of my complaint, pray for damages (or Penalty to liar) equal to two times of my losses: $10,000 * 2 = $20,000.

6) TD Waterhouse was fraudulently Cheating to SEC. I had to report this trade fraud to SEC because the defendant denying its mistake or trade fraud. However, in the letter the defendant (TD Waterhouse Investor Service, Inc) replying to SEC, it continually tried to cover up its trade fraud. It tried to play the word games in that letter: "It was determined that even though Mr. Shen's limit price was **reached,** there were shares to be executed ahead of his order." The letter used the word "**reached**" trying to hide the facts that there was more than 170 times the trading prices were **exceeded** my limit price! Defendant try to use this type misleading statement to cover up their mistake or trade fraud is not tolerant.

According to 15 U.S.D.A. §78f "National Securities Exchanges" (Page 129):
"(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of free and open market and a national market system, and in general, to protect investors and the public interest"

There is a discovery issue requested to the defendant. Since TD Waterhouse claimed, "there were shares to be executed ahead of his order", TD Waterhouse Investor service, Inc should provide all the transactions, which exceed the $2.00 limit price on PTUS on March 7. The defendant should explain clearly why all the 170 times transactions should be executed before my order. **Any insider trade fraud should be reported.** Just as in 15 U.S.C.A. §78k (a) (1) "It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account for an associated person, or an associate person there of exercise investment discretion".

According to 15 U.S.C.A. §78aaa, SEC is in a role of "plenary authority to supervise" all Security Brokers. For the defendant fraudulently Cheating to SEC, a five times of my loss should be charged to the defendant: $10,000 * 5 = $50,000.00.

I, on this count of my complaint, pray for damages (and cheating penalty to defendant) of $50,000.00.

7) Charges for document preparation and other working times spending for this case.

For solving this trade fraud issue, I have to take four days off my normal work up to today. More days are expected to be used for solving these issues.

I, on this count of my complaint, pray for damages equal to a fixed amount of $5,000 for all the works on document preparation.

Therefore, I pray that this honorable court:

(1) Order justice judgment for me in the summary process action.
(2) Find any trade fraud and insider trading of the defendant.
(3) Award damages to me in the amount of $30,000 for the defendant's trade fraud on March 7, 2000 explained in claim count 4.
(4) Award damages to me in the amount of $20,000 for the defendant's cheating to customer explained in claim count 5.
(5) Award damages to me in the amount of $50,000 for the defendant's fraudulently cheating to SEC explained in claim count 6.
(6) Award damages to me in the amount of $5,000 for the document preparation and other damages explained in count 7.
(7) The defendant should write a written apology letter to me for this trade fraud. The defendant should also guarantee that this type of trade fraud should not happen again to me and other customers.

Supplemental Appendix 2
District Judge's Opinion only for reference

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
v.	)	Trade Fraud on March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

July 12, 2000

DEFENDANT TD WATERHOUSE INVESTOR SERVICES, INC'S MOTION TO COMPEL ARBITRATION AND STAY LITIGATION

July 17, 2000

YOUNG D.J.

Motion allowed.
Case ordered administratively closed.

s/ William G. Young
Chief Judge

Supplemental Appendix 3
District Judge's Opinion only for reference

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No. 00-11190-WGY

* * * * * * * * * * * * * *

DE SHEN,
Plaintiff,

v.

T. D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant.

* MOTION HEARING

* * * * * * * * * * * * * *

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:

DE SHEN, Pro Se, 11 Summer Avenue, Malden, Massachusetts 02148, on behalf of the Plaintiff

MURPHY, MacKENZIE & SULLIVAN, (By Daniel P. Sullivan, Esq.), One Liberty Square, 4th Floor, Boston, Massachusetts 02109, on behalf of the Defendant

1 Courthouse Way
Boston, Massachusetts

November 14, 2000

THE CLERK: All rise. Court is in session, please be seated.

Calling Civil Action 00-11190, De Shen v. T.D. Waterhouse.

THE COURT: Good afternoon. Mr. De Shen, you represent yourself here?

MR. DE SHEN: Yes.

THE COURT: And?

MR. SULLIVAN: Good afternoon, your Honor. Daniel Sullivan for T.D. Waterhouse.

THE COURT: Now, let me explain why I've called you in here so we can get this case on the right track.

You brought an action, Mr. De Shen, in this Court. They moved to dismiss this action on the ground that your agreement with them has an arbitration clause. You have to arbitrate your dispute with them. I have already ruled that that appears to be so on its face. And on that basis I stayed this action. The action is not going anywhere, in this Court.

Then I got your pleading, your request that I hold a hearing saying that they were not willing to arbitrate this case. They then filed a pleading saying we're perfectly willing to arbitrate but you have to start the arbitration process. Now, let me explain the legal situation. You have to arbitrate this, not adjudicate it in court, because that's what you agree. You can appeal my ruling, you can go to a higher court and say my ruling is wrong, but that's what I think the law requires. The law favors arbitration. Likewise, the law favors those who stick arbitration clauses in their contracts and really in effect prevents you from having the benefits of the financial advice that you would otherwise get unless you arbitrate it.

That's not for me to second-guess. That's what the law is. However, I'm going to hold them strictly to their agreement to arbitrate. So when you do what you have to do under the

arbitration clause, we'll make sure that they do what they have to do under the arbitration clause, and if they don't I will say that they have waived their right to arbitrate and you can come back here and we will handle, I'm not saying you'll win, but we'll handle your issue.

Now, do you understand that?

MR. DE SHEN: I understand what you said.

THE COURT: All right.

MR. DE SHEN: I have questions.

THE COURT: All right. Well, all right, let me --

MR. DE SHEN: Go ahead.

THE COURT: I'll hear you.

MR. DE SHEN: Okay. The first question is, does their cheating SEC, should be arbitrated or should it on the Court?

THE COURT: Arbitrated.

MR. DE SHEN: Okay. Does they, does they cheated customer, should be arbitrated?

THE COURT: Arbitrated.

MR. DE SHEN: Okay. Another is my new motion, my new motion, I said they tried to block my account --

THE COURT: Yes, they say they --

MR. DE SHEN: -- from further online trading.

THE COURT: Right. They say they didn't. But --

MR. DE SHEN: Now I would like to provide the evidence.

THE COURT: No. NO. We're not going to let you provide any evidence. Because the place to have your case resolved is before the arbitrators. So now I'll ask some questions.

Reserving your right --

MR. DE SHEN: Okay.

THE COURT: -- to say that I'm mistaken when I say that you have to arbitrate first, if I say you have to arbitrate first, are you going to arbitrate?

MR. DE SHEN: Yes.

THE COURT: You are. Okay. Take that as a request for arbitration. Satisfied?

MR. SULLIVAN: Yes, your Honor.

THE COURT: Fine. What's the next thing he has to do under the arbitration clause?

MR. SULLIVAN: File a statement of claim.

THE COURT: All right.

MR. SULLIVAN: And submit his signed submission to arbitration.

THE COURT: All right.

MR. SULLIVAN: Two pieces, two pieces of paper.

THE COURT: Well, his complaint will serve as a statement of claim.

MR. DE SHEN: Question?

THE COURT: He can do it anyway he wants. But I'm just trying to make it as simple as possible. He's got a complaint, that's the statement of the claim.

What's the other thing he has to do?

MR. SULLIVAN: Well, he has to submit those documents to the director of arbitration, that's all.

THE COURT: Well, he may. But I'm going to explain that to him. What's the other thing he has to do?

MR. SULLIVAN: He just has to sign the uniform submission to arbitration, that he has to sign, along with the statement of claim.

THE COURT: Have you got that form? Have you got a form?

MR. SULLIVAN: I don't have it with me, no.

THE COURT: All right. Now --

MR. DE SHEN: Who has to pay?

THE COURT: Who has to --

MR. DE SHEN: I already paid for the Court.

THE COURT: Yes, you --

MR. DE SHEN: They answer for the arbitration. So they have to pay for the arbitration.

THE COURT: I'm not clear on that. That's whatever the rules of the American Arbitration Association is. That's one of the reasons why arbitration is not near as good a remedy for you as coming to court is.
Nevertheless, the law says that people who agree to arbitrate must first arbitrate. So whatever the rules of the American Arbitration -- it is the American Arbitration Association, isn't it counsel?

MR. SULLIVAN: Well, actually it's the NASD, your Honor.

THE COURT: It's the NASD arbitrators? All right. You tell him where he has to send it. And then you have to send those papers to the proper place, sir. And they'll give you instructions about how to arbitrate. Do you understand?

MR. DE SHEN: Yes. Apparently my account was blocked by their trade contracts.

THE COURT: Well, you say that.

MR. DE SHEN: Yes.

THE COURT: You have to arbitrate it first. So, that's what you have to do. Now, if you think I've made a mistake you can appeal to the Court of Appeals for the First Circuit. But I'm saying to you, and that's why I've brought you in here so I could explain it, I'm saying to you, you have to initiate this arbitration. And then I expect them to turn their corners very square. Once you've initiated it, they'll respond in the appropriate time and they'll set forth their position, choose the arbitrators, arbitration will go forward. But I'm not telling them they have to pay for something that rules of arbitration don't require them to pay for. I want the contractual arbitration mechanism to work. I'll see that it does. But beyond that I'm not hearing any evidence, I'm not dealing with anything.

MR. DE SHEN: Okay.

THE COURT: All right.

MR. DE SHEN: Arbitration only can solve one problem. But the other three problems they said no, we cannot arbitrate that part.

THE COURT: Then you come back, if the arbitrators say that come back to me.

MR. DE SHEN: I come back to here?

THE COURT: Yes, if the arbitrators say that. All right. That is the order --

MR. DE SHEN: Okay.

THE COURT: -- of the Court. Are we ready on --

MR. DE SHEN: Thank you.

MR. SULLIVAN: Thank you, your Honor.

THE COURT: Yes.

MR. DE SHEN: I believe I come back later.

THE COURT: Well, not until you're clear that they won't arbitrate it.

(Whereupon the matter concluded.)

Supplemental Appendix 4
Plaintiff's Updated Complaint

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

Nov 22, 2000

COMPLAINT

Parties

1) The plaintiff is a resident of Framingham, Massachusetts.
2) The defendant TD Waterhouse Investor Service, Inc is a brokerage company; It is located at 100 Wall Street, New York, NY 10005

Jurisdiction

3) This court has jurisdiction over this matter pursuant to 15 U.S.C.A. §78a.
Fairness is the **Basic principle** of stock trading. Everyone should be fairly treated in the stock market regardless what race he/she is; regardless which market the stock is traded; regardless which country the stock is traded.

Facts

4) On March 7, 2000, a trade fraud is happened. On March 7, from 10:25:24 to 13:12:48, there are more than 170 times PTUS was traded at the prices beyond my order's limit price, however my order was not filled. [NOTE: I have an open order to sell 5000 shares PTUS stock at price of $2.00. The order number is XOB6072 (valid from Feb. 24 to April 23, 2000). The account number is 46334534. The

brokerage company is TD Waterhouse investor service, Inc.]

According to 15 U.S.C.A. §78a. "Securities Exchange Act of 1934", according to 15 U.S.C.A. §78b Necessity for regulation: "… transactions in Securities as commonly conducted upon Securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, …, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, …, and **to insure the maintenance of fair and honest markets in such transaction**"

The fact mentioned in this count (4) is **unfair**. If you look at the time and sell list of PTUS on March 7, you will see that there are more than three hours, both BID and ASK prices are beyond $2.00 (NOT equal to, and ASK prices is greater than BID price). More than 170 transactions traded above $2.00 during this period.

TD Waterhouse staff told me that OTCBB is not regulated. However, according to 15 U.S.C.A. §78b, (Page 29) "Within preamble to this section declaring that security transactions as commonly conducted upon 'securities exchanges' and 'over-the-counter markets' are affected with national public interest, **the quoted words mean any security-transfer business wherein the business of marketing securities is conducted**." Thus, the unfair transaction in OTCBB shall not be tolerated also.

I believe I have the right to ask the defendant to commit the mistake or inside trade fraud. I, on this count of my complaint, pray for damages equal to three times of my losses: $2 * 5000 * 3 = $30,000.00.

5) TD Waterhouse was Cheating to customer.

According to 15 U.S.C.A. §78k-1 "National Market System for Securities; Securities Information Processors":
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(C) It is the public interest and appropriate for the protection of investors and maintenance of fair and orderly markets to assure –

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(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

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(iv) The practicability of brokers executing investor's orders in the best market; and

(v) An opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph for investor's orders to be executed without the participation of a dealer."

It was so difficult for me to get the transaction information about PTUS on March 7 and 8, 2000.

After I discover the trading fraud on March 7, 2000, I called TD Waterhouse many times, asked for 'Time & Sells' for PTUS on March 7 and 8, 2000. However, on March 17, 2000, I only received a letter, which includes 'a list of bid/ask prices of PTUS on March 7 & March 8'.

Even from the bid/ask list, everyone can easily discover this trade fraud. So I decided to call TD Waterhouse to solve this trade fraud issue. The answers from TD Waterhouse Staffs are different. Someone said this is obviously a mistake, and this should be corrected easily. Someone said this is a mistake from market maker, I should complain to SEC. However, some one was not honest. He ignore the fact that there are many times both the bid and the ask for PTUS were above $2.00 (and the bid was less than the ask) on March 7, 2000. **He told me that the reason for my order not filled was because the bid price was above the ask price (What a liar!)**. At the beginning, he refused to send me the Time & Sells list. However, under my insistent demand, he finally agreed to send me the Time & Sells for PTUS on March 7, 2000 and March 8, 2000.

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Overall purpose of this chapter is to insure maintenance of fair and **honest** markets in securities transactions."

Cheating customer is unlawful! TD Waterhouse Investor Service, Inc should educate its employee to be honest in all transactions.

On April 3, 2000, I finally received the Time & Sells for PTUS of March 7 and March 8, 2000. And the fraud was finally proved. However, when I called TD Waterhouse, they told me they couldn't solve this problem for me because this was a mistake from the market maker.

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"(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of free and open market and a national market system, and in general, to protect investors and the public interest"

There is a discovery issue requested to the defendant. Since TD Waterhouse claimed, "there were shares to be executed ahead of his order", TD Waterhouse Investor service, Inc should provide all the transactions, which exceed the $2.00 limit price on PTUS on March 7. The defendant should explain clearly why all the 170 times transactions should be executed before my order. **Any insider trade fraud should be reported.** Just as in 15 U.S.C.A. §78k (a) (1) "It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account for an associated person, or an associate person there of exercise investment discretion".

According to 15 U.S.C.A. §78aaa, SEC is in a role of "plenary authority to supervise" all Security Brokers. For the defendant fraudulently Cheating to SEC, a five times of my loss should be charged to the defendant: $10,000 * 5 = $50,000.00.

I, on this count of my complaint, pray for damages (and cheating penalty to defendant) of $50,000.00.

7) Play word game to insult customers is the defendant's innovation

First, the plaintiff needs to ask the defendant a simple question:
If our Honorable Arbitrator made a stock purchase limit order, and the stock market price is exceeded the limit order price, do you want to say:
(a) TD Waterhouse has determined that Mr. Arbitrator is due an execution.
Or do you want to say:
(b) TD Waterhouse has determined that Mr. Arbitrator's stock order is due an execution.
Anyone with a little bit of knowledge on logic and reasoning will understand that statement (a) is an insulting statement.

Now, if you read the Mr. Alan Wagner's letter to SEC (On May 3, 2000), you will see that the defendant is just use the same word game to insult its customer.

I believe TD Waterhouse Investor Service, Inc should make apology to me, and guarantee do not insult any customer again. I, on this count of my complaint, pray for damages (or Penalty to liar) equal to two times of my losses: $10,000 * 2 = $20,000.

8) The defendant **blocked my accounts** for further on-line trade.

After I file a complaint to the court, the defendant blocked my accounts for further on-line trade. I have to sign three more new contracts for login my on-line account. However, those contracts include some sentences, which might prevent me to present valid data evidence to the honorable Judge in the court.

The defendant's Nov. 7's memorandum alleges that "Defendant Has Not Blocked Plaintiff's Online

Accounts or Prevented Plaintiff from Presenting Evidence to the court". However, the Exhibit A appended to defendant's memorandum actually gives the defendant itself a big slap on its face.

Let's read the Exhibit A here:

(a) On page 2 of 13, (First Agreement).

- 5. PERMITTED USE – Subscriber shall not furnish Market Data to **any other person or entity** and shall use Market Data only for its individual use in its business.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "any other person or entity".

(b) On page 4 of 13, (Second Agreement).

- 2. You shall receive the Service and the Options Information included therein solely for your own use, and you shall not retransmit or otherwise furnish the Options Information to **any other person**.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "any other person".

(c) On page 7 of 13, (Third Agreement).

- In the left Side "I Agree/I Disagree" Box:

I will not re-disseminate or give **third party** access to the information:

I Agree I Disagree

- 3. … Subscriber may not sell, lease, furnish or otherwise permit or provide access the information to **any other Person** or to **any other office**, or place.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "third party" and/or "any other Person **or to** any other office".

Some questions, which are very 'difficult' to understand, are:

a. If those three documents are really coming from "NYSE", "AMEX", "OPRA" or "NASD", then why only the defendant forces customers to sign on those agreements? As my knowledge, all other firms do not have such requirement.
b. Why the defendant forces customers to sign on those agreements just right after the defendant knew the Plaintiff submitted the "Time and Sell" Market Data to our **Honorable Judges,** which is a strong evident that proved the defendant did something wrong.

I believe I have the right to ask the defendant to commit the mistake on preventing customers to present valid data to the Honorable Judge. I, on this

count of my complaint, pray for damages equal to three times of my losses: $2 * 5000 * 3 = $30,000.00.

9) Charges for document preparation and other working times spending for this case.

For solving this trade fraud issue, I have to take four days off my normal work up to today. More days are expected to be used for solving these issues.

I, on this count of my complaint, pray for damages equal to a fixed amount of $5,000 for all the works on document preparation.

Therefore, I pray that this honorable court:

(1) Order justice judgment for the plaintiff in the summary process action.
(2) Find any trade fraud and insider trading of the defendant.
(3) Award damages to the plaintiff in the amount of $30,000 for the defendant's trade fraud on March 7, 2000 explained in claim count 4.
(4) Award damages to the plaintiff in the amount of $20,000 for the defendant's cheating to customer explained in claim count 5.
(5) Award damages to the plaintiff in the amount of $50,000 for the defendant's fraudulently cheating to SEC explained in claim count 6.
(6) Award damages to the plaintiff in the amount of $20,000 for the defendant's insulting to customers explained in claim count 7.

(7) Award damages to the plaintiff in the amount of $30,000 for the defendant's preventing customers to present valid data to the Honorable Judge explained in claim count 8.
(8) Award damages to the plaintiff in the amount of $5,000 for the document preparation and other damages explained in count 9.
(9) The defendant should write a written apology letter to the plaintiff for this trade fraud. The defendant should also guarantee that this type of trade fraud should not happen again to the plaintiff and other customers.

Supplemental Appendix 5
Motion to re-open this case (before arbitration, Feb 3, 2001)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Feb. 3, 2001

MOTION

Plaintiff strongly request to re-open this case

Parties

1) The plaintiff is a new US citizen, a resident of Malden, Massachusetts.
2) The defendant TD Waterhouse Investor Service, Inc is a brokerage company; It is located at 100 Wall Street, New York, NY 10005

Jurisdiction

Forgery should not be tolerant.
Race Discrimination should not be tolerant.
Bill of Right should be applied.
Conflict interest should be avoided.

Facts

3) The plaintiff submitted a motion on Nov. 23, 2000. In that motion, the plaintiff had proved that the defendant was indeed trying to prevent its customer to submit valid data to our honorable Judges. In that motion, the plaintiff discovered that there is a conflict interest if this case goes through arbitration. Until now, the plaintiff has not received any court decision on this motion.

4) After carefully reading Mr. Alan Wagner's letter to SEC, the plaintiff discovered that Mr. Wagner made a forgery statement. Mr. Wagner wrote: "On February

24, 2000, **at 4:17am EST**, Mr. Shen placed a limit order (good until April 23, 2000) to sell 5000 shares of Peritus Software Services Inc. (PTUS) at $2 via our on-line trading system, webBroker". The plaintiff indeed made a limit order (good until April 23, 2000) to sell 5000 shares of Peritus Software Services Inc. (PTUS) at $2. However, the time was in the evening instead of **at 4:17am EST**. The question is why Mr. Wagner wants to change the time? What is his purpose and motivation? This type of forgery should not be tolerant.

5) The plaintiff wondering why Mr. Wagner wrote that letter to insult customer and make forgery statement. Whether Mr. Wagner was trying to practice to discriminate Asia immigrations and Asia Americans? Any race discrimination to Asia Immigrations and Asia Americans should not be tolerant.

6) As a new USA citizen, the plaintiff learned a lot about American history and the Constitution. The Bill of Right is one of the most important parts of the Constitution. Now is the time to see whether this great Constitution is really applied in this great country. According to the Bill of Right. The plaintiff believes that the plaintiff has the right to speak for the justice in this court on this case. Especially for the reason described in the next count, the plaintiff strongly request that this case should be reopened in this court and to be solved in this court.

7) Conflict Interest should be avoided

   On the Nov 14's conference, our Honorable Judge Young suggest that the plaintiff should go through Arbitration first. If the problems cannot be solved or

the problems were not solved properly, then our Honorable Judge will accept to handle this case with justice in this court. The plaintiff agreed to follow our Honorable Judge's suggestion. The plaintiff rewrote a Complaint for Arbitration (See Attached). **However, after rewriting the Complaint, the Plaintiff discovered that there is a conflict interest if this case goes through arbitration.** Mr. Sullivan informed me that I might bring arbitration before either the NASD or NYSE. The count 8 in the new Complaint document might be closely related to NASD and NYSE. With my understanding, NASD or NYSE cannot arbitrate itself since there is a conflict interest. Hence, the plaintiff would like to present this point to our Honorable Judge. After considering avoiding the conflict interest, the plaintiff strongly requests this case to be re-opened and to be handled directly through this court.

MOTION CONCLUSION

8) The defendant start from trade mistake or trade fraud, then it cheat customer, play word game to cheat SEC, made forgery statement and insult customer, then it try to prevent its customers present more valid data evidences to the Honorable Judge in the court in the future. It is the time to start to make a complete investigation on the defendant's illegal actions.

9) **I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide**

justice judgments in this court on this case according to the Bill Of Right.

Sincerely Yours,

De Shen
1028 Main St
Malden, MA 02148

Supplemental Appendix 6
District Judge's Opinion to be reviewed (1)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
v.	)	Trade Fraud on March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Feb 3, 2001

July 2, 2001

YOUNG D.J.

MOTION DENIED.
To reopen, this case must first proceed through arbitration.

s/ William G. Young
U.S. District Judge

Supplemental Appendix 7
Arbitration Statement of Claim

PLAINTIFF:	)	
De Shen	)	
	)	
	)	Trade Fraud on
VS.	)	March 7, 2000.
	)	
	)	NASD-DR Arbitration
	)	No. 01-03697
DEFENDANT:	)	

TD Waterhouse Investor Service, Inc)

July 26, 2001

COMPLAINT

Parties

1) The plaintiff De Shen is a resident of Malden, Massachusetts.
2) The defendant TD Waterhouse Investor Service, Inc is a brokerage company; It is located at 100 Wall Street, New York, NY 10005

Jurisdiction

3) This court has jurisdiction over this matter pursuant to 15 U.S.C.A. §78a.

Fairness is the **Basic principle** of stock trading. Everyone should be fairly treated in the stock market regardless what race he/she is; regardless which market the stock is traded; regardless which country the stock is traded.

Facts

4) On March 7, 2000, a trade fraud was happened. On March 7, from 10:25:24 to 13:12:48, there were more than 170 times PTUS was traded at the prices beyond my order's limit price, however my order was not filled. [NOTE: I have an open order to sell 5000 shares PTUS stock at price of $2.00. The order number is XOB6072 (valid from Feb. 24 to April 23, 2000). The account number is 46334534. The

brokerage company is TD Waterhouse investor service, Inc.]

According to 15 U.S.C.A. §78a. "Securities Exchange Act of 1934", according to 15 U.S.C.A. §78b Necessity for regulation: "… transactions in Securities as commonly conducted upon Securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, …, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, …, and **to insure the maintenance of fair and honest markets in such transaction**"

The fact mentioned in this count (4) is **unfair**. If you look at the time and sell list of PTUS on March 7, you will see that there are more than three hours, both BID and ASK prices are beyond $2.00 (NOT equal to, and ASK prices is greater than BID price). More than 170 transactions traded above $2.00 during this period.

TD Waterhouse staff told me that OTCBB is not regulated. However, according to 15 U.S.C.A. §78b, (Page 29) "Within preamble to this section declaring that security transactions as commonly conducted upon 'securities exchanges' and 'over-the-counter markets' are affected with national public interest, **the quoted words mean any security-transfer business wherein the business of marketing securities is conducted**." Thus, the unfair transaction in OTCBB shall not be tolerated also.

I believe I have the right to ask the defendant to commit the mistake or inside trade fraud. I, on this count of my complaint, pray for damages equal to three times of my losses: $2 * 5000 * 3 = $30,000.00.

5) TD Waterhouse was Cheating to customer.

According to 15 U.S.C.A. §78k-1 "National Market System for Securities; Securities Information Processors":
"(a)
(C) It is the public interest and appropriate for the protection of investors and maintenance of fair and orderly markets to assure –

(i) Economically efficient execution of securities transactions;
(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;
(iii) The availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;
(iv) The practicability of brokers executing investor's orders in the best market; and
(v) An opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph for investor's orders to be executed without the participation of a dealer."

It was so difficult for me to get the transaction information about PTUS on March 7 and 8, 2000.

After I discover the trading fraud on March 7, 2000, I called TD Waterhouse many times, asked for 'Time & Sells' for PTUS on March 7 and 8, 2000. However, on March 17, 2000, I only received a letter, which includes 'a list of bid/ask prices of PTUS on March 7 & March 8'.

Even from the bid/ask list, everyone can easily discover this trade fraud. So I decided to call TD Waterhouse to solve this trade fraud issue. The answers from TD Waterhouse Staffs are different. Someone said this is obviously a mistake, and this should be corrected easily. Someone said this is a mistake from market maker, I should complain to SEC. However, some one was not honest. He ignore the fact that there are many times both the bid and the ask for PTUS were above $2.00 (and the bid was less than the ask) on March 7, 2000. **He told me that the reason for my order not filled was because the bid price was above the ask price (What a liar!)**. At the beginning, he refused to send me the Time & Sells list. However, under my insistent demand, he finally agreed to send me the Time & Sells for PTUS on March 7, 2000 and March 8, 2000.

According to 15 U.S.C.A. §78b (Page 33):
"This chapter was designed to provide for regulation of securities exchanges and over-the-counter markets to prevent inequitable and unfair practices in such exchanges and markets.

Overall purpose of this chapter is to insure maintenance of fair and **honest** markets in securities transactions."

Cheating customer is unlawful! TD Waterhouse Investor Service, Inc should educate its employee to be honest in all transactions.

On April 3, 2000, I finally received the Time & Sells for PTUS of March 7 and March 8, 2000. And the fraud was finally proved. However, when I called TD Waterhouse, they told me they couldn't solve this problem for me because this was a mistake from the market maker.

I believe TD Waterhouse Investor Service, Inc should make apology to me, and guarantee do not tell lie again to customer. I, on this count of my complaint, pray for damages (or Penalty to liar) equal to two times of my losses: $10,000 * 2 = $20,000.

6) TD Waterhouse was fraudulently Cheating to SEC. I had to report this trade fraud to SEC because the defendant denying its mistake or trade fraud. However, in the letter the defendant (TD Waterhouse Investor Service, Inc) replying to SEC, it continually tried to cover up its trade fraud. It tried to play the word games in that letter: "It was determined that even though Mr. Shen's limit price was **reached,** there were shares to be executed ahead of his order." The letter used the word "**reached**" trying to hide the facts that there were more than 170 times the trading prices were **exceeded** my limit price! Defendant try to use this type misleading statement to cover up their mistake or trade fraud is not tolerant.

According to 15 U.S.D.A. §78f "National Securities Exchanges" (Page 129):
"(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of free and open market and a national market system, and in general, to protect investors and the public interest"

There is a discovery issue requested to the defendant. Since TD Waterhouse claimed, "there were shares to be executed ahead of his order", TD Waterhouse Investor service, Inc should provide all the transactions, which exceed the $2.00 limit price on PTUS on March 7. The defendant should explain clearly why all the 170 times transactions should be executed before my order. **Any insider trade fraud should be reported.** Just as in 15 U.S.C.A. §78k (a) (1) "It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account for an associated person, or an associate person there of exercise investment discretion".

According to 15 U.S.C.A. §78aaa, SEC is in a role of "plenary authority to supervise" all Security Brokers. For the defendant fraudulently Cheating to SEC, a five times of my loss should be charged to the defendant: $10,000 * 5 = $50,000.00.

I, on this count of my complaint, pray for damages (and cheating penalty to defendant) of $50,000.00.

7) Play word game to insult customers is the defendant's innovation

First, the plaintiff needs to ask the defendant a simple question:
If our Honorable Arbitrator made a stock purchase limit order, and the stock market price is exceeded the limit order price, do you want to say:
(c) TD Waterhouse has determined that Mr. Arbitrator is due an execution.
Or do you want to say:
(d) TD Waterhouse has determined that Mr. Arbitrator's stock order is due an execution.
Anyone with a little bit of knowledge on logic and reasoning will understand that statement (a) is an insulting statement.

Now, if you read the Mr. Alan Wagner's letter to SEC (On May 3, 2000), you will see that the defendant is just use the same word game to insult its customer.

I believe TD Waterhouse Investor Service, Inc should make apology to me, and guarantee do not insult any customer again. I, on this count of my complaint, pray for damages (or Penalty to insulter) equal to two times of my losses: $10,000 * 2 = $20,000.

8) The defendant **blocked my accounts** for further on-line trade.

After I file a complaint to the court, the defendant blocked my accounts for further on-line trade. I have to sign three more new contracts for login my on-line account. However, those contracts include some sentences, which might prevent me to present valid data evidence to the honorable Judge in the court.

The defendant's Nov. 7's memorandum alleges that "Defendant Has Not Blocked Plaintiff's Online

Accounts or Prevented Plaintiff from Presenting Evidence to the court". However, the Exhibit A appended to defendant's memorandum actually gives the defendant itself a big slap on its face.

Let's read the Exhibit A here:

(i) On page 2 of 13, (First Agreement).
   a. 5. PERMITTED USE – Subscriber shall not furnish Market Data to **any other person or entity** and shall use Market Data only for its individual use in its business.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "any other person or entity".

(j) On page 4 of 13, (Second Agreement).
   a. 2. You shall receive the Service and the Options Information included therein solely for your own use, and you shall not retransmit or otherwise furnish the Options Information to **any other person**.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "any other person".

(k) On page 7 of 13, (Third Agreement).

a. In the left Side "I Agree/I Disagree" Box:

I will not re-disseminate or give **third party** access to the information:

I Agree I Disagree

b. 3. … Subscriber may not sell, lease, furnish or otherwise permit or provide access the information to **any other Person** or to **any other office**, or place.

Anyone with a little bit of knowledge on logic and reasoning will understand that our Honorable Judges are all included in defendant's "third party" and/or "any other Person **or to** any other office".

Some questions, which are very 'difficult' to understand, are:

a. If those three documents are really coming from "NYSE", "AMEX", "OPRA" or "NASD", then why only the defendant forces customers to sign on those agreements? As my knowledge, all other firms do not have such requirement.
b. Why the defendant forces customers to sign on those agreements just right after the defendant knew the Plaintiff submitted the "Time and Sell" Market Data to our **Honorable Judges,** which is a strong evident that proved the defendant did something wrong.

I believe I have the right to ask the defendant to commit the mistake on preventing customers to present valid data to the Honorable Judge. I, on this count of my complaint, pray for damages (or Penalty to the intent of preventing customers to present valid data to the Honorable Judge) equal to three times of my losses: $2 * 5000 * 3 = $30,000.00.

9) Charges for document preparation and other working times spending for this case.

For solving this trade fraud issue, I have to take four days off my normal work up to today. More days are expected to be used for solving these issues.

I, on this count of my complaint, pray for damages equal to a fixed amount of $5,000 for all the works on document preparation.

Therefore, I pray that this honorable court:

(1) Order justice judgment for the plaintiff in the summary process action.
(2) Find any trade fraud and insider trading of the defendant.
(3) Award damages to the plaintiff in the amount of $30,000 for the defendant's trade fraud on March 7, 2000 explained in claim count 4.
(4) Award damages to the plaintiff in the amount of $20,000 for the defendant's cheating to customer explained in claim count 5.

(5) Award damages to the plaintiff in the amount of $50,000 for the defendant's fraudulently cheating to SEC explained in claim count 6.
(6) Award damages to the plaintiff in the amount of $20,000 for the defendant's insulting to customers explained in claim count 7.
(7) Award damages to the plaintiff in the amount of $30,000 for the defendant's preventing customers to present valid data to the Honorable Judge explained in claim count 8.
(8) Award damages to the plaintiff in the amount of $5,000 for the document preparation and other damages explained in count 9.
(9) The defendant should write a written apology letter to the plaintiff for this trade fraud. The defendant should also guarantee that this type of trade fraud should not happen again to the plaintiff and other customers.

Supplemental Appendix 8

Arbitration Causal Challenge For the Fraud of Violating the Rules of Arbitration Panel Selection

PLAINTIFF:	)	
De Shen	)	
	)	
	)	Trade Fraud on
VS.	)	March 7, 2000.
	)	
	)	NASD-DR Arbitration
	)	No. 01-03697
DEFENDANT:	)	

TD Waterhouse Investor Service, Inc)

March 10, 2002

Causal Challenge

The Critical issue is Timing

In Ms. Kelly Davis' letter of December 4, 2001, Kelly used bold font wrote the following statement:
If we do not have your list by the twentieth day, you will be deemed to have accepted all arbitrators on the list.

In another paragraph, Ms. Kelly wrote:
Please identify the arbitrators whom you have struck from the list and the remaining arbitrators' rankings, and **sign and return the list to our office so that we receive it by December 24, 2001.**

In the following paragraph, Ms. Kelly wrote:
After twenty days have past, we will consolidate the parties' lists and inform you who is on the arbitration panel.

The Plaintiff (Claimant) Mail the arbitrator list on Dec. 15, 2001 by Certified mail. The tracing number is 7001 2510 0008 0220 8608. The Plaintiff selected the following arbitrators:

(1) Mr. David E. Marsan (A00926)
(2) Mr. Henry L.P. Schmelzer (A03682)
(3) Mr. Thomas H. Tucker (A03993)
(4) Mr. Richard D. Jordan (A09291)

All other arbitrators were struck out from the given list.

On Dec. 26, 2001, the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. Ms. Kelly informed me that NASD had not received the

Defendant (Respondent)'s list yet. And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all (or most) the arbitrators should come from the Plaintiff's arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. Ms. Suzanne Green told me that the Defendant submitted their arbitrator list on Dec. 24, 2001. This is entirely different what the Plaintiff heard from Ms. Kelly Davis. One person's statement should be incorrect (Either Ms. Kelly Davis or Ms. Suzanne Green). Hence the Plaintiff wrote a letter to Ms. Suzanne Green, asked the following Simple Questions:

I was heard that the defendant did not delivered their list of arbitrators even by Dec 26, 2001. Hence, I would like to ask the following questions for fully understand how this panel list was decided:

(i) By what type of the mail that the defendant delivered their list of arbitrators?
   (a) Certified Mail;
   (b) Fed. Express.

(ii) What is the Postmark date on the defendant's mail for delivering their list of Arbitrators? Can I get a copy of the Envelop of the defendant's mail with the Postmark date?

(iii) By which date that your office received the defendant's mail regarding to the list of Arbitrators.

(iv) How the panel list was finally decided in detail?

Two weeks was passed. Ms. Suzanne Green is still unable to answer the above simple questions. **A big question mark is raised on whether Ms. Suzanne Green is HONEST OR NOT on this case. If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case.**

(1) According to **paragraphs (c)(4)(B), "the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1)."** Hence, Plaintiff has the right to object the selected arbitrator Mr. Maurice J. Skoler. The reasons are list below.

(2) No person or organization can completely prevent from making some mistakes. The critical issue is how should the person or organization to handle the mistakes if it happened. The good and proper attitude is committing the mistake as soon as possible, and makes some compensation to the person who suffered from the mistake. The bad and improper attitude is that although knowing a mistake is happened, but continually hiding, cheating and denying the mistake. The penalties should be applied to the person or organization, which took the second type of attitude.

The Defendant (the Respondent) in this case is just the organization, which took the second type of attitude. **It started from denying its mistake on "Failure to Execute" on the Plaintiff's stock trading order,** then it cheated customer, then it cheated SEC and insulted the customer, then it hired lawyer to lie in the Statement of Answer.

To qualify arbitrating this case, the arbitrator should at least have the skill of arbitrating on "Executions-Failure to Execute". Since Mr. Maurice J. Skoler does not have the skill of "Executions-Failure to Execute", he is not qualified on arbitrating this case.

(3) Mr. Maurice J. Skoler does not have experience on arbitrating stock trading issues in the last three years.

(4) The Plaintiff provide the following arbitrator list for replacing Mr. Maurice J. Skoler:

(i) Mr. David E. Marsan (A00926)
(ii) Mr. Henry L.P. Schmelzer (A03682)
(iii) Mr. Thomas H. Tucker (A03993)

All the arbitrators list above have the skill of **"Executions-Failure to Execute".**

Regards,

Plaintiff: De Shen

Supplemental Appendix 9
Ms. Elizabeth R. Clancy's Letter

NASD Dispute Resolution, Inc
125 Broad Street, 36th Fl.
New York, NY 11566
646-835-5753
Fax: 212-509-9041

ELIZABETH R. CLANCY
Associate Vice President and Regional Director

March 26, 2002

Delvin DeShen
11 Summer Avenue
Malden, MA 02148

RE: NASD-DR Arbitration Number 01-03697
De Shen and Bai Sheng Zhou vs.
T.D. Waterhouse Investor Services, Inc

Dear Mr. DeShen:

I am responding to your March 7, 2002 e-mails to Linda D. Feinberg, Barbara Brady, and me.

I reviewed all of the issues you raised and will address each of them. I apologize if there has been some misunderstanding between you and Kelly Davis and Suzanne Green.

On December 4, 2001 we notified you that your case was ready for the appointment of arbitrators under our Neutral List Selection System (NLSS). Rule 10308 of the Code of Arbitration Procedure (the "Code") provides that NASD Dispute Resolution (NASD DR) gives each party a list of

arbitrators. The parties must strike through or cross out, and rank the arbitrators on the list and return the list to us within twenty days after the lists are sent to the parties. A party may strike one or more arbitrators for any reason. If a party's list is not received on time, the party is deemed to have accepted all arbitrators on the list. Pursuant to Rule 10308(c) (4)(B) of the Code, the Director has the authority in certain circumstances to appoint an arbitrator not on the list to fill a Panel. I enclose for your review a copy of the letter that was sent to you on December 4, 2001, outlining our paneling procedures, pursuant to Rule 10308 of the Code, and NLSS.

Your arbitrator ranking form was sent to us by US Mail and received in our office on December 20, 2001. Respondent's ranking form was sent to us by facsimile and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001. I enclose for your review a copy of the date stamped cover letter that accompanied Respondent's ranking form. Both parties responses were received before the deadline of December 24, 2001. We used both parties' lists to create a consolidated list. The Director used his authority to extend the list to complete the panel because all of the industry arbitrators were struck by you or the Respondent.

You said you spoke with Ms. Davis on December 26, 2001, and she informed you that NASD DR had not yet received the Respondent 's ranking form. Ms. Davis was not in the Office on December 26, 2001. You called Ms. Green to discuss the composition of the Panel, and you state that Ms. Green told you that the Respondent submitted their ranking form on December 24, 2001. The misunderstanding may have arisen because Ms. Green told you that Respondents ranking form was due on or before December 24, 2001 and was submitted on time.

Your February 24, 2002 e-mail to Ms. Green asserted a causal challenge in an attached file, and asked a number of questions about the composition of the panel. Ms. Green advised you of NASD DR policy, requiring all correspondence between a party and us be provided to all parties. Ms. Green responded to your causal challenge on February 28, 2002, before Respondent's receipt of the challenge, because the challenge addressed the administrative issue of receipt of Respondent's ranking form. As stated earlier, the arbitrator ranking form was submitted by facsimile, and then sent by overnight courier and received by us on December 11, and 12, 2001 respectfully.

I can assure you that Ms. Davis and Ms. Green are honest and will administer your case in a fair and neutral manner. It is unfortunate that there was a misunderstanding about the ranking forms and their return dates. I am hopeful that I answered your concerns.

Very truly yours,

s/ Elizabeth R. Clancy
Elizabeth R. Clancy

CC: Linda D. Feinberg
Barbara Brady
Patricia Williams
Pete S. Michaels

Supplemental Appendix 10
Arbitration Opening Statement

I am clearly remember a dental treatment related picture with the following statement:
"It's tiny now. Don't let it grow up to be Oral Cancel!"

I would like to contribute this aphorism to the defendant.

No person or organization can completely prevent from making some mistakes. The critical issue is how should the person or organization to handle the mistakes if it happened. The good and proper attitude is committing the mistake as soon as possible, and makes some compensation to the person who suffered from the mistake. The bad and improper attitude is that although knowing a mistake is happened, but continually hiding, cheating and denying the mistake. The penalties should be applied to the person or organization, which took the second type of attitude. The more cheating and denying, then the more penalties.

This case started on the defendant's Failure to Execute customer's order on March 7, 2000. Then the defendant continually denied committing its obvious mistake (or trade fraud). Then the defendant cheated SEC and insulted customer. Then the defendant tried to prevent customer submitting valuable data to the honorable judges. Then the defendant tried to divert the Arbitration Panel's focus and attention on the critical issue by requesting huge amount irrelevant documents. Then the defendant failed to provide case related critical information to the Panel and the Plaintiff. Then the defendant tried to delay the arbitration with unreasonable reasons at the 'last minute' before the arbitration.

The plaintiff has advised the defendant many times that the defendant should commit its mistake ASAP. However, the defendant ignored all the plaintiff's advices. In this opening statement, I would like to advice the defendant again: "Wake up! It is still not too late to commit your mistake before the panel making the final decision. Put off your mistakes from your shoulder, then you can march faster towards the bright future!"

The plaintiff strongly believe that there should be a big difference whether the Defendant commit its mistakes before or after panel's decision.

Yes, this case is quite simple. However, by this case, it can indeed test many principles in this great country.

The plaintiff wishes, hopes and expects that the justice will be fulfilled on this case without any race prejudice or other bias.

Supplemental Appendix 11
Unfair Arbitration Award (Abstract)

Award
NASD Dispute Resolution, Inc

In the Matter of the Arbitration Between:
De Shen and BaiSheng Zhou (Claimants)
vs.
T.D. Waterhouse Investor Services, Inc (Respondent)

Case Number: 01-3697

.....

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are denied.

FEES

.....

Supplemental Appendix 12
Emails Regarding to the Fraud of Edited Arbitration-Hearing Tape

From: Delvin Shen
[mailto:delvin.shen@verizon.net]
Sent: Monday, August 26, 2002 9:31 PM
To: Green, Suzanne
Cc: Delvin Shen; De Shen
Subject: RE: Contents in the arbitration hearing are missed in the tapes
w hitch you send to me.

Delvin D. Shen
11 Summer Ave,
Malden, MA 02148

Aug. 26, 2002

Attn: Suzanne Green
125 Broad Street
36th Floor
New York, NY 10004

Ms. Green:

The fact that "There are many contents missed on the tape which you deliver to me" is 100% for sure.

The question is whether the panel should take the responsibility or you should take the responsibility.

Since you deny to ask the panel to review the tape which you deliver to me, that means you will take the full responsibility.

You should understand that tape forgery is a criminal behaviors.

In order to give you a chance to correct your mistake and avoid the criminal charge, you may make two copies of exact of original hearing tapes, send to me within 20 days. (However, this time, there should be no any missing contents!)

Otherwise, I will see you on the court on this issue.

Take care,

-- Delvin Shen --

-----Original Message-----
From: Green, Suzanne
[mailto:Suzanne.Green@NASD.com]
Sent: Monday, August 26, 2002 2:22 PM
To: 'Delvin Shen'
Cc: 'dca@mmmslaw.com'
Subject: RE: Contents in the arbitration hearing are missed in the tapes
w hitch you send to me.

Dear Mr. Shen,
This responds to your August 14, 2002 letter.

You have requested that the Panelists review copies of the tapes and advise if they think that there are missing contents. As I stated in my earlier response of August 14, 2002, I have already spoken to each arbitrator on the Panel. Each Arbitrator has stated that the entire proceeding was properly recorded. Therefore, your request that the Panel review the tapes is denied.

Please clarify what specific contents you feel are missing from the tapes.
Once you identify what you feel is missing, I will then be able to address
your specific concerns.

Suzanne E. Green
NASD
Arbitration Administrator
125 Broad Street
New York, NY 10004

-----Original Message-----
From: Delvin Shen
[mailto:delvin.shen@verizon.net]
Sent: Wednesday, August 14, 2002 9:04 PM
To: Green, Suzanne
Cc: Delvin Shen; De Shen
Subject: RE: Contents in the arbitration hearing are missed in the tapes
w hich you send to me.

Delvin D. Shen
11 Summer Ave,
Malden, MA 02148

Aug. 14, 2002

Attn: Suzanne Green
125 Broad Street
36th Floor
New York, NY 10004

Ms. Green:

Please send a copy of the same tapes (which you sent to me) to each of
the member of the arbitration panel, ask them to verify whether the tapes
are the exact recordings of the hearing.

I need a written letter from each panel member to confirm
that each of them has listened the copied tapes, and what they think whether
some contents of the hearing are missed.

I will ask the honorable judge to make judgment on who were cheating on
making the copied tapes.

At the mean time, I have to submit the missing contents tapes to the
court.

Take care,

-- Delvin Shen --

-----Original Message-----
From: Green, Suzanne
[mailto:Suzanne.Green@NASD.com]
Sent: Wednesday, August 14, 2002 2:45 PM
To: 'Delvin Shen'
Subject: RE: Contents in the arbitration hearing are missed in the tapes
w hich you send to me.

Mr. Shen
This responds to your August 10, 2002 e-mail concerning the tapes you have
received in case number 01-03697.

I have confirmed with the Panel that there were a total of three (3) tapes
used to record the hearing on the merits during the one day hearing. The
tapes that I sent to you were a "exact" recoding of the tapes that I
received back from the panel.

The Panel has confirmed that the entire hearing was tape recorded, except
for executive sessions, which are not recorded. The Panel also said that
they stopped the recorder when you stated that you would like to take a
break.

In your letter you state that "many contents" were missing. Please clarify
if you are referring to problems hearing the what was being said or if you
are referring to something else.

Suzanne E. Green
Arbitration Administrator
NASD Dispute Resolution
125 Broad Street
New York, NY 10004

-----Original Message-----
From: Delvin Shen
[mailto:delvin.shen@verizon.net]
Sent: Saturday, August 10, 2002 10:20 PM
To: Suzanne Green
Cc: Delvin Shen; De Shen
Subject: Contents in the arbitration hearing are missed in the tapes
which you send to me.

Delvin D. Shen
11 Summer Ave,
Malden, MA 02148

Aug. 10, 2002

Attn: Suzanne Green
125 Broad Street
36th Floor
New York, NY 10004

Ms. Green:

I received the two copies of tapes of the arbitration hearing today (Aug. 10, 2002).
However, each copy only included three tapes. After I listened to the tapes, I found many contents in the hearing are missed in the tapes.

Please verify this issue ASAP. If this is your co-worker's mistake, please correct it, and send to me the two exact copies of the hearing tapes ASAP.
If this is done purposely, I don't think the honorable judge will tolerant this kind of behaviors.

Take care,

- Delvin Shen -

Supplemental Appendix 13
One proof of arbitration-hearing tapes were edited

(See Appendix 16 of Brief Appendix of Appellant)

After the arbitration of June 20, 2002, the Plaintiff request the arbitration administrator Ms. Suzanne Green send me two copies of arbitration hearing tapes.

Ms. Suzanne Green told me that total **four** tapes, each tape costs $15.00. The total cost of the two copies of hearing tape is $120.00

The Plaintiff hence sends a check of $120.00 to NASD Dispute Resolution, Inc on July 27, 2002.

The content of the image of that check:

PERSONAL
MONEY ORDER

Fleet 647082755

For hearing tapes (Two copies)

Memo NASD No. 01-03697

PAY $*****120.00

$**120*00DOLLARS*AND*00*CENTS*

TO THE ORDER OF
NASD Dispute Resolution, Inc

s/Delvin D. Shen
11 Summer Ave
Malden, MA 02148

One proof of arbitration-hearing tapes were edited
(See Appendix 16 of Brief Appendix of Appellant)

On Aug. 10, 2002, the Plaintiff received the hearing tapes. However, each copy only included three tapes. When the Plaintiff listen to the hearing tapes, the Plaintiff found that there are many contents in the hearing are missed in the tapes. The tapes were obviously edited.

After the Plaintiff requesting the true copies of arbitration hearing tapes, Ms. Suzanne Green changed her tone from originally there are **four** hearing tapes for case 01-03697 to there are **three** hearing tapes for case 01-03697.

The following check is NASD's refund check.:

SunTrust
SunTrust Bank

NASD
Finance Department
9509 Key West Avenue
Rockville, MD 20850
(240)386-5295

CHECK NO: 0000065103
Check Date Pay This Amount
08/12/02 *****$30.00

PAY Thirty and 00/100 Dollars

TO THE ORDER OF
De Shen And BaiSheng Zhou
C/O De Shen
11 Summer Avenue
Malden, MA 02148

Supplemental Appendix 14
Motion to re-open this case (after arbitration, Aug 10, 2002)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

Aug 10, 2002

MOTION

Plaintiff strongly request to re-open this case

Parties

1) The plaintiff is a US citizen, a resident of Malden, Massachusetts.
2) The defendant TD Waterhouse Investor Service, Inc is a brokerage company; It is located at 100 Wall Street, New York, NY 10005

Jurisdiction

Race Discrimination or race prejudice should not be tolerant.
Bill of Right should be applied.
All people are created equal.

Facts

3) The plaintiff submitted a motion on Feb 3, 2001. In that motion, the plaintiff wrote on count 9: "**I, hereby, pray to the Honorable Judge in this Court, in order to avoid the conflict interest, this case should be reopened and the investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.**"

4) On July 2, 2001, our Honorable Judge Young replied to this motion: " **To reopen, this case must first proceed through arbitration.**"

5) On July 26, 2001, the plaintiff formally submitted the "Arbitration Statement of Claim" to NASD Dispute Resolution, Inc. Although the Plaintiff worry about that there might be some conflict interest issue if this case handled by arbitration, the Plaintiff decided to follow the honorable judge's order, seriously go through the arbitration first.

6) On Nov. 7, 2001, the defendant submitted "Respondent's Statement of Answer". In this document, the defendant openly requested, "this Panel dismiss the Statement of Claim, with **prejudice**." (Page 4, Line 9). This proved that the defendant does not want to seriously go through the arbitration.
From the dictionary, you can see that there are two major meanings for the word "prejudice":
    i. An opinion, favorable or unfavorable (more often the later), formed without fair examination of facts.
    ii. Unreasonable bias, suspicion, intolerance, or irrational hatred of other races, creeds, regions, occupations, etc.

Obviously, that defendant's request is entirely against the law, against the Constitution. Hence, it should be seriously punished.

7) On Nov. 25, 2001, the plaintiff submitted "First Request For Document and Information to Defendant". On that document, the Plaintiff wrote:

"Considering the statement wrote by the lawyer of the defendant in the Statement of Answer that: "Market orders receive execution priority and, because there were market orders ahead of his, those were filled at $2.00". **The plaintiff strongly requests that the defendant should provide all the documents and information about the orders related to all the 137 transactions on PTUS, which were executed between 10:23:39 to 12:04:28 of March 7, 2000 (Page 9 – Page 13 in the Market/Trade Recap), and the trade price were exceeded $2.00 (from $2 1/32 to $2 ¼). For those orders and transactions, the defendant should provide the order types, the order prices, when the orders placed and who placed those orders. All the inside trading transactions should be indicated."**

This request basically asked the defendant to add the following information, which includes "Order Type", "Order Price", "When the order placed" and "whether that order is placed by Market Maker or Broker" to the Market Recap document.

This is the critical information to judge whether there were any unfair trades to cause the failure of execute the plaintiff's order.

However, until today the defendant still does not provide this critical information yet.

8) **When organizing the Panel, the administrator of the arbitrator Lie**

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly informed me that NASD had not received the Defendant (Respondent)'s list yet.** And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all (or most) the arbitrators should come from the Plaintiff's arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told me that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the plaintiff has to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the plaintiff sent to the President of NASD, the plaintiff wrote:

"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter. In her letter, **Ms. Clancy provided a third version** of this timing: the defendant sent to NASD the arbitration ranking form by facsimile to NASD on Dec 11, 2001.

Until now, who was lying, who was cover up, is still a riddle. The plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. I wish Ms. Kelly could tell the truth on the court. If she does tell the truth on the court, then this issue will be covered up.

9) On March 28, 2002, the plaintiff submitted an "Amendment of Arbitration Statement of Claim" based on the defendant continually deny its wrongdoing.

10) On June 20, 2002, at the arbitration hearing, the defendant submitted "Respondent's amended Statement of Answer", in which, the defendant first time exposed the market maker "Knight Securities",

and indicated that "Knight Securities" was ultimately responsible for the execution of the order.

On the arbitration hearing, the defendant continually lied under the oath:

1. The defendant submitted the "Respondent's Amended Statement of Answer" on the June 20, 2002's hearing. In that document, the defendant continually wrote, "Market orders receive execution priority and, because there were market orders ahead of his, Knight Securities executed those market orders first."
Anyone who familiar with stock trading will know that market order is very risky. So, only about 5% orders are fall into market orders. **According to the probability theory, it is almost impossible that all the tractions between 10:23:39 to 12:04:28 of March 7, 2000 are market orders. The defendant's reject providing the critical information is further proved that the defendant was continually lying.**

2. In the defendant's "Respondent's Amended Statement of Answer", the defendant wrote, "When it came time, in turn, for Claimant's order to be executed, the market was trading below $2.00 and it did not reach $2.00 again before April 20, 2000." The defendant was lying again on this matter. This issue is a Queuing issue. The plaintiff's order was placed on Feb. 23, 2002. Long before March 7, 2001. According to Queuing theory, the first placed order should be served first. So, the plaintiff's order should be executed at the very beginning of the time when the bid price reached $2.00. And the plaintiff's order should be executed 100% when the bid price exceeded the $2.00 limit price. **Again, The defendant's reject providing the**

critical information is further proved that the defendant was continually lying.

A serious arbitration or judgment should base on facts. However, the three arbitrators did not ask the defendant to provide the critical information such as the order type, the order price, the order placed time, and who placed those order of all the transactions on PTUS on March 7, 2002. **I am curious how the arbitrators can make right decision without those critical facts?** Without those critical facts, what the arbitrators can be based on? The only thing the arbitrators can be based on is the race! **Arbitration based on racial prejudice is wrong and should not be tolerant!**

11) On July 20, 2002, the plaintiff received a copy of the Award document from the NASD Dispute Resolution, Inc. In this document, NASD unfairly dismissed the plaintiff's claim in the entirety. **Every item in the plaintiff's Statement of Claim was not be arbitrated! There is no any conclusion from the arbitrators on each item of the plaintiff's Statement of Claim. Of cause, there is no any reasoning on how to get those conclusions!** Also, it denied all other requests from the plaintiff. **NASD's decision is not based on the critical facts, which until now the defendant had not provided yet. Its decision is with prejudice, prejudice of race, prejudice against Asia Immigration.**

The entire arbitration process is unfair due to the conflict interest. This is because this case is partially but directly associated with NASD (See count 8 of the claim). The result is just as the plaintiff predicted in the Motion of Feb. 3, 2001.

Because until now the defendant has not present the critical information requested by the plaintiff, because the unfair result conducted by the NASD due to the conflict interest, the plaintiff strongly request this court reopen this case as promised by our Honorable Judge Young.

Since the Panel of Arbitration did not make judgment based on the facts, and did not provide Item by Item judgments for this case, the part (c) of the conclusion of the "Amendment of Arbitration Statement of Claim" should be applied:
(c) If the defendant escape from the Item by Item Justice Arbitration, then when this case back to the Court, the Base Line of Award will be $1,280,000.00. The TRIPLE Penalty will be $3,840,000.00.

MOTION CONCLUSION

12) The defendant start from trade mistake or trade fraud, then it cheated customer, played word game to cheat SEC, made forgery statement and insult customer, then it tried to prevent its customers present more valid data evidences to the Honorable Judge in the court in the future, then it openly asked the arbitrators to make arbitration by racial prejudice against Asian Immigration. It is the time to start to make a complete investigation on the defendant's illegal actions.

13) **I, hereby, pray to the Honorable Judge in this Court, in order to punish the defendant's series of wrong doing, this case should be reopened and the**

investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

Sincerely Yours,

De Shen
11 Summer Ave
Malden, MA 02148

Supplemental Appendix 15
Cover letter for Aug. 10, 2002's Motion

11 Summer Ave
Malden, MA 02148

Aug. 16, 2002

Case: 00-11190WGY

US District Court
Suite 2300
U.S. Courthouse
One Courthouse Way
Boston, MA 02110

Honorable Judge:

According to the Honorable Judge Young's statement on July 2, 2001, the plaintiff seriously went through the arbitration with the defendant from July 26, 2001 to July 20, 2002. As predict, due to the conflict interest, NASD was unable to fairly make item-by-item judgment on this case.

Justice judgment should base on fair examination of facts.

However, the defendant rejected to provide the case related critical information again and again. I wonder, without that critical information, how the arbitrators can make any right decision. The plaintiff strongly requests the honorable judge to compel the defendant to provide the critical case related document requested by the plaintiff in the Plaintiff's "First Request For Document and Information to Defendant".

Justice judgment should base on the principle of "All People are created equal".

However, the defendant openly requested the arbitration panel to dismiss this case by race prejudice. And the result is just as the defendant's willing, the three arbitrators dismissed the Plaintiff's claim in the entirety without any reasoning:
Count (8) which is directly associated with NASD was untouched;
The defendant's failure to execute customer's order was not punished;
The defendant's cheating and insulting customer was not punished;
The defendant's cheating SEC was not punished;
The defendant and its lawyer's lying under the oath were not punished;
The defendant failed to provide case related critical information was not punished;
The defendant's hiring lawyer to invade the Plaintiff's privacy was not punished;
In general, the defendant successfully escaped from the justice judgment in the arbitration hearing due to the conflict interest.

During the selecting arbitrators procedure, the administrator of NASD Arbitration, Ms. Green lied and unfairly composed a Panel, which is in favor of the defendant.

After hearing, after many times of the plaintiff requesting on the hearing tapes, the administrator of NASD Arbitration, Ms. Green finally deliver to the plaintiff two copies of the hearing tapes, in which, there are many contents are missed. Some panel member's speech, which obviously bias in favor of the defendant, are erased from the tapes. Ms. Green might think that, by the way, she could help the defendant win the game. However, her IQ is too low! Her actions just like an

old story – "A person put a slogan 'There is no 300 once Silver here' above the place where he hided 300 once Silver". Without the judgment in the court, Ms. Green's action has already proved that this arbitration was unfairly processed by the arbitration panel. Until now, Ms. Green is still unwilling to provide the "Exact" copy of the original hearing tape. A copy of tapes edited by the NASD will be present to this court. The plaintiff strongly requests the honorable judge to compel the NASD to provide exact copies of the original hearing tape to the Plaintiff and the court.

On July 2, 2001, our Honorable Judge Young replied to the Plaintiff's motion: " **To reopen, this case must first proceed through arbitration.**"

The plaintiff hereby, present a motion, "**Motion --- Plaintiff strongly request to re-open this case**" to this court. The plaintiff pray to the Honorable Judge in this Court, in order to punish the defendant's series of wrong doing, this case should be reopened and the investigation about the defendant's illegal actions in this case should be handled by this Honorable Court. I sincerely pray to the Honorable Judge to provide justice judgments in this court on this case according to the Bill Of Right.

Take care and regards,

-- De Shen --

cc Mr. Alan Wagner
Compliance Department,
TD Waterhouse Investor Service, Inc
100 Wall Street
New York, NY 10005

Supplemental Appendix 16
Motion to Compel The Production Of Documents

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

Aug 15, 2002

Plaintiff's MOTION
To Compel The Production Of Documents and to Add the Knight Securities to the Defendant List

Judgment should base on facts instead of prejudice.

As grounds for this Motion, Plaintiff states as follows:

1. Plaintiff served its "First Request For Document and Information to Defendant" on Nov. 25, 2001. A copy of this document is attached hereto as Exhibit A.

   This request basically asked the defendant to add the following information, which includes "Order Type", "Order Price", "When the order placed" and "whether that order is placed by Market Maker or Broker" to the Market Recap document.

   This is the critical information to judge whether there were any unfair trades to cause the failure of execute the plaintiff's order.
   However, one and half year had passed, the defendant failed to deliver this critical file to the Arbitration Panel. Hence, the entire arbitration is baseless. Without this critical information, how could the arbitrators to make the right judgment?

2. On the arbitration hearing, the defendant first time exposed the Market Maker, the Knight Securities. The

defendant wrote on its "Respondent's Amended Statement of Answer", "the 'market maker' becomes responsible for the execution of orders in bulletin board stocks. In this case, the market maker for PTUS was Knight Securities. At the time Claimant placed his limit order, Respondent placed the order with Knight Securities, who was ultimately responsible for the execution of the order."

Since the Knight Securities was involved this issue, Plaintiff request to add the Knight Securities to the Defendant list.

3. In the Plaintiff's "Post Hearing Document Request", the Plaintiff wrote:
"Form the hearing of June 20, 2002, the defendant first time mentioned the market maker, Knight Security. So, all the puzzles are now put on the Knight Security. From the 'Market/Trade Recap', Failure to Execute is for sure. However we have to figure out that whether the defendant was fault or the 'Knight Security' was fault, or both at fault.

The plaintiff requests all documents between the defendant and the 'Knight Security' related to this case.

(1) When the defendant put the plaintiff's order to the 'Knight Security'? Please present a copy of the order.

(2) Did the defendant sent investigate letters to the 'Knight Security'? If 'yes', then the defendant should provide those letters and the reply letters from the 'Knight Security' to the

plaintiff. If 'no', then it proved that the defendant is irresponsible.

(3) The plaintiff believes that the 'Knight Security' should provide the 'Time and Sell' information which basically based on the 'Market Trade Recap', plus the Sell Order types, Sell Order priees, and when the order was placed, etc for the March 7, 2000's PTUS transactions."

Sincerely Yours,

De Shen
11 Summer Ave
Malden, MA 02148

Supplemental Appendix 17
District Judge's Opinion to be reviewed (2)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Aug 10, 2002

DOCKETED

Sept. 6, 2002

Treated as a motion for reconsideration, motion denied.

s/William G. Young
Chief Judge

Supplemental Appendix 18
District Judge's Opinion to be reviewed (3)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF: Case: 1:00-cv-11190

Chief Judge William G. Young – Pre

Shen – plaintiff

v.

T.D. Waterhouse – defendant

NOTICE OF ACTION BY THE COURT

Notice To:

De Shen
11 Summer Avenue
Malden, MA 02148

**

The following ruling was made on 9/24/02 and entered on the docket:

Chief Judge William G. Young Endorsed Order entered re: [18-1] motion to compel the production of documents. Motion Denied, this case having been referred to arbitration and closed on 7/19/00. cc/cl. . [EOD Date 9/25/02]

Supplemental Appendix 19
Motion on having a hearing

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Sep 29, 2002

Plaintiff's MOTION On Having A Hearing

The resolution of Arbitration is unfair

The plaintiff received two denied letters, which denied two Plaintiff's motions. However, these two letters are all based on an assumption that the arbitration conducted a fair resolution. Unfortunately, due to the conflict interests, the resolution of the arbitration is extremely unfair.

The plaintiff hence requests a hearing. On the hearing, the plaintiff will explain to the honorable judge in detail about why the plaintiff believes that the arbitration resolution is extremely unfair.

De Shen
11 Summer Ave
Malden, MA 02148

Supplemental Appendix 20
District Judge's Opinion to be reviewed (4)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF: Case: 1:00-cv-11190

Chief Judge William G. Young – Pre

Shen – plaintiff

v.

T.D. Waterhouse – defendant

NOTICE OF ACTION BY THE COURT

Notice To:

De Shen
11 Summer Avenue
Malden, MA 02148

**

The following ruling was made on 10/7/02 and entered on the docket:

Chief Judge William G. Young Endorsed Order entered Denying [19-1] motion for Hearing . [EOD Date 10/7/02]

Supplemental Appendix 21
On requesting the reason of court ruling

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
v.	)	Trade Fraud on March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Oct. 20, 2002

Plaintiff's MOTION On Requesting the reason of court ruling on Oct. 7, 2002

The resolution of Arbitration is unfair

The plaintiff received the third denied letter, which denied Plaintiff's motion on request a hearing on why the arbitration resolution is extremely unfair.

The plaintiff doubt whether this ruling was made by Judge Young. There is no Judge Young's signature on the document.

The plaintiff believes that an honorable judge should listen to the people. If a judge does not listen to the people, then, he/she cannot earn the respect from the people.

The plaintiff believes that an honorable judge should make the judgment according to the law. The plaintiff requests the person (who ever made the ruling of Oct. 7, 2002) provide the reason of the ruling and answer the following question:

According to which law(s) the ruling of Oct. 7, 2002 was made?

The justice has not fulfilled on this case yet. No matter how long the road towards the justice will be, the plaintiff will pursue the justice for this case until the justice fulfilled on this case.

De Shen
11 Summer Ave
Malden, MA 02148

cc Mr. Alan Wagner
Compliance Department,
TD Waterhouse Investor Service, Inc
100 Wall Street
New York, NY 10005

Supplemental Appendix 22
District Judge's Opinion to be reviewed (5)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF: Case: 1:00-cv-11190

Chief Judge William G. Young – Pre

Shen – plaintiff

v.

T.D. Waterhouse – defendant

NOTICE OF ACTION BY THE COURT

Notice To:

De Shen
11 Summer Avenue
Malden, MA 02148

**

The following ruling was made on 10/28/02 and entered on the docket:

Chief Judge William G. Young Endorsed Order entered Denying [20-1] motion for clarification of [0 – 0] endorsed order denying Motion for Hearing . [EOD Date 10/28/02]

Supplemental Appendix 23
Motion To Compel NASD to Provide True Copy Of Arbitration Hearing Tape

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Nov. 15, 2002

Plaintiff's MOTION
To Compel NASD to Provide True Copy Of
Hearing Tape Of Case 01-03697

Tape Forgery is a Criminal Behavior

The plaintiff received the hearing tape of the arbitration (NASD No. 01-03697) on Aug. 10, 2002. When the plaintiff listen to the tape, the plaintiff discovered that many content of the arbitration hearing are not in the tape.

On the arbitration, the arbitrators openly bias in favor of the defendant. For example, when the plaintiff asked the defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects the defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said: **"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government can ensure that those who breach the trust of the American people are punished."**

The arbitrators helped the defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It is Trade Secret". The arbitrators' action and the defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said: **"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."**

The plaintiff believes that the defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(a) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(b) Promote Reporters, Lawyers and Security Workers to support world peace and justice.

(c) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.

(d) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said:
"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

The plaintiff believes that it is the time, on this court, to expose the defendant's trade fraud and NASD's cooking the hearing tape. The plaintiff respectively requests the court:

(I) Order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the plaintiff and to this court;

(II) Order the defendant to provide true transaction data (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the plaintiff and to this court.

The plaintiff believes that this court, as one part of the US government, has the guts and power to make the above orders.

De Shen
11 Summer Ave
Malden, MA 02148

cc Mr. Alan Wagner
Compliance Department,
TD Waterhouse Investor Service, Inc
100 Wall Street
New York, NY 10005

cc Ms. Suzanne Green
NASD Dispute Resolution, Inc,
125 Broad Street
36th Floor
New York, NY 10004

Supplemental Appendix 24
District Judge's Opinion to be reviewed (6)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

Nov 15, 2002

Nov. 25, 2002

YOUNG D.J.

MOTION DENIED without prejudice to its renewal should either party seek confirmation or vacation of the arbitration award.

s/ William G. Young
U.S. District Judge

Supplemental Appendix 25
Motion to Request Vacation of Arbitration Award

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

Dec. 8, 2002

Plaintiff's MOTION
To Request Vacation of the Arbitration Award on
Case NASD No. 01-03697

The Arbitration Was Extremely Unfair

On the arbitration, the arbitrators openly bias in favor of the defendant. For example, when the plaintiff asked the defendant to provide detailed case related trade information to the Arbitration Panel. (Without those basic facts, the arbitration will be baseless.) The Arbitrator Chair Richard D. Jordan openly protects the defendant. He said loudly, "It is trade secret!" However, this statement is erased from the hearing tape.

This is one fact that it proved the arbitration resolution is extremely unfair.

(1) In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:
"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

Erase content from hearing tape is one type of "falsifying records". And this type of forgery hearing tape is a criminal behavior. NASD arbitration administrator Ms. Suzanne Green should be punished on her bad behavior. Her bad behavior has breached the people's trust and abused NASD's power.

(2) On the same speech, President Bush said:
"Self-regulation is important, but it's not enough. Government cannot remove risk from investment -- I know that -- or chance from the market. But government can do more to promote transparency and ensure that risks are honest. And government

can ensure that those who breach the trust of the American people are punished."

The arbitrators helped the defendant to refuse providing critical case related trade information and to hide the true trade transaction data by claiming "It is Trade Secret". The arbitrators' action and the defendant's action are strictly against the law, which passed by Congress and Senate. Congress, Senate and President Bush ask to promote transparency. While the arbitrators' action and the defendant's action are strictly going to the opposite direction. Their actions breached the trust of the American people.

The plaintiff believes that the court should act now to promote the data transparency and ensure the unfair and un-honest trade fraud is punished.

(3) On the same speech, President Bush said: **"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."**

The plaintiff believes that the defendant's denying its mistake again, again and again should be seriously punished. When this case re-opened in the court, the minimum punishment should be $1,000,000.00.

However, if the punishment reached or exceeded $1,000,000.00, the plaintiff is planning to use at least 80% of the awarded money to establish a non-profit fund, which will be used for the following purpose:

(e) Promote High Education Organizations to utilize the most advance computer technologies, e.g. Academy Enterprise System, etc.

(f) Promote Reporters, Lawyers and Security Workers to support world peace and justice.
(g) Promote culture interchanges in this world so that people from different countries with different culture background can understand each other.
(h) Promote Boston's new construction and expansion. So that Boston will be one of the largest and the most famous cities in the world.

(4) On the same speech, President Bush said:
"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

The plaintiff believes that ***it is the time, on this court, to expose the defendant's trade fraud and NASD's cooking the hearing tape***. The plaintiff respectively requests the court:

(I) ***Send a Subpoena to NASD***, order the NASD to provide the true copy of the hearing tape of the arbitration (NASD No. 01-03697) to the plaintiff and to this court;

(II) ***Order the defendant to provide true transaction data*** (include Order type, Order Date, Order Price, and "whether that order is placed by Market Maker or Broker" appended to the Market Recap) to the plaintiff and to this court.

The plaintiff believes that this court, as one part of the US government, has the ***guts and power*** to make the above orders.

De Shen
11 Summer Ave
Malden, MA 02148

cc Mr. Alan Wagner
Compliance Department,
TD Waterhouse Investor Service, Inc
100 Wall Street
New York, NY 10005

cc Ms. Suzanne Green
NASD Dispute Resolution, Inc,
125 Broad Street
36th Floor
New York, NY 10004

Supplemental Appendix 26
District Judge's Opinion to be reviewed (7)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No. 00-11190-WGY

* * * * * * * * * * * * * *

DE SHEN,
Plaintiff,

v.

T. D. WATERHOUSE INVESTOR SERVICE, INC.,
Defendant.

* MOTION HEARING

* * * * * * * * * * * * * *

BEFORE: The Honorable William G. Young,
District Judge

APPEARANCES:
DE SHEN, Pro Se, 11 Summer Avenue, Malden, Massachusetts 02148, on behalf of the Plaintiff

MURPHY & MICHAELS, LLP (By Derek C. Anderson, Esq.), One Liberty Square, 4th Floor, Boston, Massachusetts 02109, on behalf of the Defendant

1 Courthouse Way
Boston, Massachusetts

February 6, 2003

THE CLERK: Calling Civil Action 00-11190, De Shen v. T.D. Waterhouse.

THE COURT: Would the parties identify themselves, please.

MR. DE SHEN: This is De Shen, plaintiff.

MR. ANDERSON: Derek Anderson, your Honor, Murphy and Michaels, representing the defendant.

THE COURT: Mr. De Shen, you're here to represent yourself, sir.

MR. DE SHEN: Correct.

THE COURT: And you have every right to represent yourself and to be treated with the same courtesy that an attorney is treated. And your, your motion is a serious one. But I wonder if you have considered getting an attorney to represent you. As you can see, the matters in the Court are technical. And you were here once before on this issue of whether you were to go to arbitration, and having heard your argument then I stayed the Court's hand and sent the matter to arbitration. Now we're back because functionally you want to vacate the arbitration award and since you've tried that now they want to confirm the arbitration award.

Now, I just wonder if you don't want an attorney here.

MR. DE SHEN: I would like to have an attorney but I don't have enough money to pay them.

THE COURT: Well, have you, have you gone to any of the lawyer referral services?

MR. DE SHEN: You know, I'm busy at weekday, on the weekdays, but in the weekend, Saturday I call many lawyers. Mostly it's answering machine and some answered they want money. So.

THE COURT: All right. Well, then let's – so you want to go ahead today and that is your right. Is that correct?

MR. DE SHEN: Yeah, I want to go ahead today.

THE COURT: All right.

MR. DE SHEN: And process this.

THE COURT: How do you deal with their argument that you have waited too long to challenge the arbitration award in this court?

MR. DE SHEN: Your Honor, I --

THE COURT: Yes.

MR. DE SHEN: Sorry.

THE COURT: Go right ahead.

MR. DE SHEN: Okay. I have a reply to the defendant's surreply. You already read this. Right?

Actually my action for vacating this arbitration award, it start from August 10th. August 10, I wrote the first motion which is motion to reopen this case. To reopen means vacate the arbitration award and handle this case in this court. The defendant's --

THE COURT: All right.

MR. DE SHEN: -- case is from the arbitration.

THE COURT: Wait.

MR. DE SHEN: And now we have to have justice here.

THE COURT: Wait a minute. Now, you answered my question.

What do you say to that? I mean, isn't he right? If, if we date this from August 10th when he moved to reopen he's within the three months, correct.

MR. ANDERSON: If we dated it August 10th.

THE COURT: Well, shouldn't we?

MR. ANDERSON: No, your Honor.

THE COURT: Why not?

MR. ANDERSON: As a preliminary matter, your Honor, the defendant filed a motion for leave to file a surreply. I don't know that the Court's ruled on that motion. But the cases that we cited to you in that case are fairly on topic.

THE COURT: They may be but he may file a surreply.

Now, what about the answer to my question. He answered my question. Why shouldn't I treat – he's pro se. I closed the case. As is my practice, I said anyone could open it at any time. The only reason to reopen a case after arbitration is to

get the award vacated or confirmed. So you were put on notice that he was challenging the award when he moved to reopen. Why isn't that so?

MR. ANDERSON: Your Honor, the Federal Arbitration Act is very clear. There is in Section 12 a three month time provision.

THE COURT: But he's within it is my point.

MR. ANDERSON: Your Honor, the motion to reopen does not constitute a motion to vacate.

THE COURT: That's, that's your point.

MR. ANDERSON: Yes.

THE COURT: What's the best authority for that?

MR. ANDERSON: The McClelland case that the defendant cited to in its surreply, your Honor. The McClelland case involved almost the exact situation that exists here. In McClelland the party that was seeking to vacate the award filed a motion to reopen within the three month period, filed a motion to vacate outside of the three month period. The Court held that the motion to reopen did not constitute a motion to vacate and that the motion to vacate was therefore not filed timely.

THE COURT: Your citation is correct, but that's persuasive, that's not controlling on this Court. Is it?

MR. ANDERSON: Your Honor, it's not a First Circuit case.

THE COURT: Right.

MR. ANDERSON: There is a case coming out of the Puerto Rico District Court, your Honor, which is not necessarily controlling on this Court but I believe should also be persuasive. That is the Franco case, I believe, your Honor, which we sited to in our original brief, our opposition.

THE COURT: Okay. I rule that his motion to reopen tolls the time because the only reason to reopen a case after arbitration is either to confirm or vacate the award.

Now, on the merits, Mr. De Shen, why should I vacate this award?

MR. DE SHEN: Okay. Because the arbitration is unfair. You can see from the beginning to the end the arbitrator is totally biased to the defendant.

THE COURT: But that's a problem with arbitration.

MR. DE SHEN: Yeah, that's a problem with arbitration.

THE COURT: I mean it is.

MR. DE SHEN: So it's --

THE COURT: If you get a biased arbitrator. They won.

MR. DE SHEN: The arbitrator say loudly this is a trade secret when I ask them provide detailed data which they, and until now they do not provide it. And this sentence was erased from the hearing tape. I got the hearing tape. Here is the hearing tape. This is the edited hearing tape. The arbitrator administrator, arbitration administrator, Susan Green, she give me the tape. And I listen to the tape. I find this statement is missing. And there are other statement missing, too.

THE COURT: And what does that show? Suppose that's true. What does that show?

MR. DE SHEN: It hide the data from the truth.

THE COURT: Well.

MR. DE SHEN: And this is the -- the entire argument is this. When I ask them provide the trading data, they finally provide me the market recap. And the market recap already very convincingly say this is their fault. Because there are three hours, the market traded at the bid price and ask price exceeded my sale order price. So anyone who has any investment knowledge they will know my order should be filled. However, my order does not fill.

And then the defendant, the arbitrator, the defendant said, oh, market order have the high priority. Okay. Then they have to prove all of those 137, 137 transactions is market order. Then I don't have a complaint. But they fail to explain this. Right?

So, this is – and then the defendant say because my order is, when I reach the, when the market maker reach the time to sell my order the market had already gone down.

There is one more important issue, is a queuing issue, you know, who should be first. If the defendant do not provide information that all the order is market order. Actually in the hearing the defendant commit there are limit orders inside all the 137 orders.

So, between those limited orders whose, whose order should be executed first. And they should be according to queuing theory. First come, first server.

THE COURT: According to --

MR. DE SHEN: So my --

THE COURT: Wait. Wait. According to what? According what theory?

MR. DE SHEN: Queuing theory. This is a mathematics theory.

And let me put to you simple. Suppose --

THE COURT: Are you saying they have to follow that? That's some requirement?

MR. DE SHEN: Yeah. Suppose --

THE COURT: Why?

MR. DE SHEN: Suppose ten persons sit in a line --

THE COURT: No, no.

MR. DE SHEN: -- to by a book.

THE COURT: I --

MR. DE SHEN: Right?

THE COURT: I understand --

MR. DE SHEN: And there are many persons sitting in the front of you. I'm sitting in the first one.

THE COURT: Mr. De Shen? Mr. De Shen?

MR. DE SHEN: Yes.

THE COURT: I understand first in, first out.

MR. DE SHEN: Okay. Yeah.

THE COURT: I just had to understand it. I'm asking you, is that some regulation --

MR. DE SHEN: Yes.

THE COURT: -- of the National Association of Securities Dealers?

MR. DE SHEN: That's what we talk about priority. He said further --

THE COURT: All right, let me ask, let me ask him.

MR. DE SHEN: Yes.

THE COURT: You're willing, I just want to be clear here, you're willing to take all those things that he says as true but under the Federal Arbitration Act I must confirm the award anyway. Isn't that right?

MR. ANDERSON: Correct, your Honor.

THE COURT: Yes. And respectively, Mr. De Shen, that is the law. Now, unfortunately you would have been well advised – and I recognize that you say you can't afford an attorney. There are a variety of ways to attack arbitration clauses before arbitration.

MR. DE SHEN: I --

THE COURT: None-- I hear you. In fact, I held a hearing.

MR. DE SHEN: I can prove they are, the arbitrator --

THE COURT: Mr. De Shen?

MR. DE SHEN: -- arbitration administrator is --

THE COURT: Mr. De Shen, you really must listen to me.

MR. DE SHEN: Okay.

THE COURT: There's various ways that could have been attacked before. They were not. I fear because you are, were not represented by counsel. That's a problem in our society. And so I allowed the case to go to arbitration.

Now that it has been arbitrated, even taking all those things which you've just said as true, it is my duty under the Federal Arbitration Act to tell you that they do not afford relief. Arbitration is second-class justice. It can be unilaterally or largely unilaterally enforced on a party as a cost of trading in

the securities markets. That is the policy of the Supreme Court of the United States. I am bound to uphold it.

The motion of the defendant to confirm the arbitration award is --

MR. DE SHEN: One second.

THE COURT: -- granted and your motion is denied.

MR. DE SHEN: One second. I have – this is –

THE COURT: Mr. De Shen, the Court has ruled. You have the right to appeal to the First Circuit Court of Appeals. But that's my ruling.

We'll call the next case.

MR. DE SHEN: Okay. I will appeal but I need the transcript.

THE COURT: Well, you'll have to order it from the court reporter.

MR. DE SHEN: Okay. Your judgment is unfair.

THE COURT: My judgment is in accordance with the law. I am --

MR. DE SHEN: I --

THE COURT: But you're entitled to your view.

All right. We'll call the next case.

MR. ANDERSON: Thank you, your Honor.

(Whereupon the matter concluded.)

Supplemental Appendix 27
District Judge's Opinion to be reviewed (8)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
No: 00-11190-WGY

SHEN
Plaintiff

v.

T.D. WATERHOUSE
Defendant

JUDGMENT

This action came before the Court for a Hearing on Defendant's Motion to Affirm the Arbitration Award and Plaintiff's Motion to Vacate the Arbitration Award. The issues have been heard and the Court Orders the Motion to Affirm the Arbitration Award is Allowed and the Motion to Vacate the Arbitration Award is Denied.

IT IS ORDERED AND ADJUDGED JUDGMENT FOR THE DEFENDANT T.D. WATERHOUSE.

TONY ANASTAS
Clerk

Seal of
United States District Court
District of Massachusetts

s/Elisabeth Smith
Deputy Clerk

Supplemental Appendix 28
Motion To Request Ms. Kelly Davis To Testimony on the Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

Feb. 17, 2003

Plaintiff's MOTION
To Request Ms. Kelly Davis To Testimony on the Court

The deadline of submitting the Panel candidate list is Dec. 24, 2001. The Plaintiff selected the Panel list and submitted on Dec. 15, 2001. One day (after Dec. 24, 2001, and before Feb.1, 2002) (In the document I sent to NASD, I mentioned Dec. 26, 2002, however, I might miss remember the exact date) the Plaintiff called Ms. Kelly Davis, asked her whether the Defendant (Respondent) had submit their arbitrator list on time. **Ms. Kelly Davis informed me that**

NASD had not received the Defendant (Respondent)'s list yet. And she told me NASD would process on the arbitration panel list anyway without waiting for the Defendant (Respondent)'s list.

If Ms. Kelly Davis' statement is true, then, all the arbitrators should come from the Plaintiff selected arbitrator list. However, when the Plaintiff received the finalized arbitrator list of the Panel from Ms. Suzanne Green, the Plaintiff found that only Mr. Richard D. Jordan (4) was selected as the arbitrator of the Panel.

The Plaintiff called Ms. Suzanne Green to clarify what happened. **Ms. Suzanne Green told me that the Defendant submitted their arbitrator list on Dec. 24, 2001**.

Since the result of the arbitration is critically depended by who is (are) arbitrator(s), the Plaintiff had to file causal challenge to request Ms. Suzanne Green to clarify the timing issue. However, one month passed, Ms. Suzanne Green still unable to clarify this issue.

On a letter that the Plaintiff sent to the President of NASD, the Plaintiff wrote:
"After one month that I asked Ms. Suzanne Green regarding to the Timing Issue on the Defendant's submission of its selected Arbitrator List for the Panel, **Ms. Suzanne Green is still unable to answer my simple question. Hence, I formally propose the investigation request on this issue to NASD Dispute Resolution, Inc.**

If Ms. Suzanne Green was cheating or lying on the Arbitration Job, she should not be qualified as an Arbitration Administrator on this case."

On March 26, 2002, Ms. Elizabeth R. Clancy, the associate Vice President of NASD, replied me a letter. In her letter, **Ms. Clancy provided a third version** of this timing: "Respondent's ranking form was sent to us by facsimile, and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001." People have to ask Ms. Clancy, *December 11, 2001 was far away from December 24, 2001 deadline, overnight delivery is quite enough, why the Defendant send another copy by facsimile besides the overnight delivery? Is this just like an Old Story, "when completed drawing a beautiful picture of a snake, appending legs to that snake"?*

Until now, who was lying, who was cover up, is still a riddle. The Plaintiff strongly believes that Ms. Kelly Davis was telling the truth at that moment. Until now, Ms. Kelly Davis has not lie yet. The Plaintiff request Ms. Kelly Davis to testimony on the court. If Ms. Kelly Davis could tell the truth on the court, the Plaintiff request the Court protect Ms. Kelly Davis. avoid the revenges from NASD. If she does not tell the truth on the court, then this issue will be covered up. The Plaintiff wonders whether the Court is talent enough to expose the truth.

De Shen
11 Summer Ave
Malden, MA 02148

cc Mr. Derek C. Anderson
Murphy & Michaels, LLP,
Attorneys At Law
One Liberty Square
Boston, MA 02109

cc Ms. Kelly Davis
NASD Dispute Resolution, Inc,
125 Broad Street
36th Floor
New York, NY 10004

Supplemental Appendix 29
Motion To Add NASD Dispute Resolution, Inc to Defendant List

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF: De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT: T. D. WATERHOUSE INVESTOR SERVICE, INC.,	)	Civil Action No. 00-11190-WGY

April 20, 2003

Plaintiff's MOTION
To Add NASD Dispute Resolution, Inc to Defendant List of This Case.

On Feb. 17, 2003, The Plaintiff submitted a Motion entitled "Plaintiff's MOTION To Request Ms. Kelly Davis to Testimony on the Court". The court clerks informed me that Mr. William Young has received this Motion and have not made any decision yet. Two months has passed. Until now, the Plaintiff has not received any court decision. **The**

Plaintiff is wondering when the Court will make the decision on the Plaintiff's Feb. 17, 2003's motion.

The Plaintiff analyzed why the Court made a wrong decision on Feb. 6, 2003's hearing. The Plaintiff believes that the major issue is that the Court ignored NASD Arbitration Administrator Suzanne Green's wrong doing. Due to the conflict interest, Ms. Suzanne Green forged the Arbitration Panel List, and later, she edited the Arbitration Hearing Tape. This constituted Arbitration Management Fraud. On the Feb. 6's hearing, Mr. William Young committed that the Plaintiff's motion is "a serious one" (See Transcript Page 2, Line 13 – 14). However, Mr. William Young did not seriously handle this case. Mr. William Young did not investigate the detail on the Ms. Suzanne Green's cooking hearing tape issue even though the Defendant did not deny this issue in many documents and on the hearing.

The Plaintiff believes that Arbitration Management Fraud is a serious criminal action. This criminal action should not be ignored. **Since this criminal action is directly associated with the arbitration of this case's Trade Fraud, the Plaintiff respectively request to the Court that the NASD Dispute Resolution, Inc should be added to the Defendant's list on this case.** Ms. Suzanne Green's wrongdoing should be punished on this Court.

De Shen
11 Summer Ave
Malden, MA 02148

cc Mr. Derek C. Anderson
Murphy & Michaels, LLP,
Attorneys At Law
One Liberty Square
Boston, MA 02109

cc Ms. Suzanne Green
NASD Dispute Resolution, Inc,
125 Broad Street
36th Floor
New York, NY 10004

cc Richard Cushing Donovan
Clerk's Office
U.S. Court of Appeals
For the First Circuit
Boston, MA 02109-4590

Note: This motion is sent to all parties by certified mail.

Supplemental Appendix 30
District Judge's Opinion to be reviewed (9)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PLAINTIFF:	)	
De Shen	)	
	)	Trade Fraud on
v.	)	March 7, 2000.
	)	
DEFENDANT:	)	Civil Action
T. D. WATERHOUSE INVESTOR	)	No. 00-11190-WGY
SERVICE, INC.,	)	
	)	

April 20, 2003
Plaintiff's MOTION
To Add NASD Dispute Resolution, Inc to Defendant List of This Case.

April 23, 2003

In view of the appeal, to the extent this court has jurisdiction, this motion and that filed on 3/05/03 [35-1] (request for Ms. Kelly Davis to Testimony on the Court) are both denied.

s/ William G. Young
U.S. District Judge

Supplemental Appendix 31
July 4, 2004's letter to judges of US Court of Appeals for the First Circuit

De Shen
11 Summer Ave
Malden, MA 02148

July 4, 2004

Levin H. Campbell
Juan R. Torruella
Bruce M. Selya
US COURT OF APPEALS
FOR THE FIRST CIRCUIT

Dear Sir/Madam:

On 5th Request to Answer the Basic Questions

Since Feb. 22, 2004, I have requested you 4 times to answer my BASIC questions.
However, more than FOUR months passed, you are still unable to answer those BASIC questions. Are those BASIC questions really difficult for you to answer? I wonder why you cannot answer those BASIC questions within the reasonable response time? If you are not talent enough (or do not have courage) to answer those BASIC questions, then, you may ask any judge(s) in the US COURT OF APPEALS FOR THE FIRST CIRCUIT who is

talent enough or has courage to help you to answer those BASIC questions.

If you think by using a word "denied", you may resolve all the issues in this world; it would be the #1 joke in the world!

A judge is Honorable if he/she can make correct judgments. However, judge is human. Any human can make mistake. Hence, a judge is also Honorable if he/she can correct his/her misjudgment. If a judge made a mistake, but refuse to correct his/her mistake, then People have to doubt whether that judge is qualified as a judge.

In this letter, I would like to request you the **5th** time to answer those BASIC questions. All those questions are required to be answered. If you are not talented enough (or do not have the courage) to answer those questions, then you have to openly commit your mistakes. A former apology is required.

Here are the questions that you need to answer:

(1) Should Frauds be punished?
(2) If T.D. Waterhouse made a Fraud, should T.D. Waterhouse be punished?
(3) If NASD made a Fraud or Frauds, should NASD be punished?
(4) Since NASD is a second justice organization, if NASD violated the Law, made Frauds, should NASD be double punished?

(5) If a judge does not punish Frauds, is that judge ignoring his/her duty?
(6) If a judge in District Court made a mistake, but a judge or a panel of judges from Appeals Court do not correct his/her mistake, is that judge or that panel of judges from Appeals Court ignoring his/her/their duty?

Take care and regards,

Delvin D. Shen

Supplemental Appendix 32
The return letter from US Court of Appeals for the First Circuit

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

July 14, 2004

De Shen
11 Summer Ave.
Malden, MA 02148

Dear Mr. De Shen:

In accordance with the Court's June 18, 2004 order entered in Shen v. T.D. Waterhouse, Appeal No. 03-1478, the clerk's office is returning the enclosed "5th Request to Answer the Basic Questions" to you without action.

Sincerely,
Richard Cushing Donovan, Clerk

By: JULIE GREGG
Julie Gregg, Appeals Attorney

Enclosure

Supreme Court, U.S.
FILED
NOV 19 2004
OFFICE OF THE CLERK

No. 04-381

IN THE

Supreme Court of the United States

DE SHEN,

Petitioner,

v.

T.D. WATERHOUSE INVESTOR SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

DEREK C. ANDERSON
Counsel of Record
PETE S. MICHAELS
DEBORAH G. EVANS
MICHAELS & WARD, LLP
One Liberty Square
Boston, MA 02109
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Attorneys for Respondent

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QUESTIONS PRESENTED[1]

1. Did the United States Court of Appeals for the First Circuit ("First Circuit") err in affirming the judgment of the United States District Court for the District of Massachusetts ("District Court"), in which the District Court confirmed an arbitration award that Petitioner claimed was procured by fraud and should have been vacated under the Federal Arbitration Act, 9 U.S.C. § 10(a)(1) (2004)?

2. Did the First Circuit violate Petitioner's right to free speech under the First Amendment by failing to hold a hearing prior to affirming the District Court's judgment?

---

1. Petitioner has proceeded *pro se* throughout these proceedings and continues to do so. The Petition for Writ of Certiorari lists nine (9) questions presented. Many, if not all, of the questions presented by Petitioner are nonsensical and do not warrant this Court's consideration. The questions set forth herein represent Respondent's best summary of the issues presented by Petitioner in his Petition for Writ of Certiorari.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

T.D. Waterhouse Investor Services, Inc. hereby states that it is a wholly-owned subsidiary of T.D. Waterhouse Group, Inc., which is itself a wholly-owned subsidiary of The Toronto Dominion Bank, a public company.

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE FIRST CIRCUIT[2]

1. Petitioner, Delvin DeShen

2. Respondent, T. D. Waterhouse Investor Services, Inc.

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2. The Petition for Writ of Certiorari incorrectly lists the judges of the First Circuit, the District Court judge, and employees of the National Association of Securities Dealers, Inc. ("NASD") as parties to the proceedings in the First Circuit.

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CITATIONS OF THE UNOFFICIAL REPORTS OF THE OPINIONS BELOW[3]

DeShen v. T.D. Waterhouse Investor Services, Inc., No. 00-11190-WGY (D. Mass. Feb. 27, 2003).

DeShen v. T.D. Waterhouse Investor Services, Inc., Nos. 03-1415, 03-1478 (1st Cir. Feb. 5, 2004).

JURISDICTIONAL STATEMENT[4]

Jurisdiction is proper pursuant to 28 U.S.C. § 1254 (2004). The United States Court of Appeals for the First Circuit entered judgment on February 5, 2004, which was certified and issued as mandate on April 13, 2004. Petitioner filed his Petition for Writ of Certiorari on June 20, 2004.

THE STATUTE INVOLVED IN THE CASE[5]

9 U.S.C. § 10 (2004)

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was

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3. The Petition for Writ of Certiorari quotes the judgment of the First Circuit instead of citing to the unofficial reports of the opinions below.

4. The Petition for Writ of Certiorari incorrectly lists the "Bill of Rights, Executive Order 13271 of July 9, 2002, Federal Arbitration Act, and 15 U.S.C.A. §78a" in the jurisdictional statement.

5. The Petition for Writ of Certiorari incorrectly includes the Bill of Rights, "all people are created equal," and "people should have the right of the freedom of speech" as statutes involved in the case.

made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

INTRODUCTION[6]

Petitioner seeks to have this Court review a First Circuit judgment affirming a judgment by the District Court in which the District Court confirmed an arbitration award. Petitioner contends that the underlying arbitration award was procured by fraud and should have been vacated pursuant to § 10(a)(1) of the Federal Arbitration Act ("FAA"). Petitioner further contends that the First Circuit violated his right to free speech under the First Amendment by failing to conduct a hearing prior to ruling on his appeal.

Petitioner, however, has set forth no compelling reason for the Court to grant certiorari in this case. Petitioner has not alleged that the First Circuit's judgment makes new law or that it conflicts with a decision of this Court or with another Court of Appeals. Rather, Petitioner merely seeks to have this Court revisit arguments that have been considered and rejected by both the District Court and the First Circuit.

Petitioner asserts that the arbitration award should have been vacated under § 10(a)(1) of the FAA due to alleged (i) "fraud on violating the rules of the arbitration panel selection"; and alleged (ii) "fraud on modifying arbitration hearing tape." (Pet. at 12.)[7] Both the District Court and the

---

6. The Petition for Writ of Certiorari fails to present the Court with accuracy, brevity, and clarity those arguments that are essential to ready and adequate understanding of the points requiring consideration. Pursuant to United States Supreme Court Rule 14(4), Petitioner's failure in this regard constitutes sufficient grounds to deny the petition.

7. References to the Petition for Writ of Certiorari are cited as "Pet. at__."

First Circuit have passed on these issues, however, implicitly finding that Petitioner did not satisfy his burden of establishing by clear and convincing evidence that the arbitration award was procured by fraud or of demonstrating that the purported frauds materially related to an issue in arbitration.

There is no compelling reason for the Court to review the First Circuit's decision. In fact, further review by this Court of Petitioner's fraud arguments would serve only to thwart the Congressional purpose of encouraging speedy resolution of arbitration disputes and to undermine the broad federal policy favoring the finality of arbitration awards.

Moreover, the First Circuit did not err in affirming the District Court judgment denying Petitioner's motion to vacate. The District Court correctly determined that Petitioner did not demonstrate by clear and convincing evidence that the arbitration award was procured by fraud or that the alleged fraud materially related to an issue in arbitration.

Finally, Petitioner's unsupported assertion that the First Circuit violated his First Amendment right to free speech is not sufficiently significant to warrant this Court's review. The First Amendment does not guarantee a right to a hearing on an appeal of a district court's judgment confirming an arbitration award. It is within the First Circuit's discretion as to whether or not to hold a hearing. The First Circuit did not violate Petitioner's right to free speech.

STATEMENT OF THE CASE

Petitioner De Shen (hereinafter "Petitioner") filed a complaint for "trade fraud" against Respondent T.D. Waterhouse Investor Services, Inc. (hereinafter "Respondent") in the District of Massachusetts on June 4, 2000. (P.C. Supp. App. 6.)[8] The underlying causes of action asserted by Petitioner involved allegations that Respondent failed to execute a trade of 5000 shares of Peritus Software Services, Inc. (P.C. Supp. App. 6.) Respondent moved the District Court to compel arbitration and stay litigation on July 12, 2000. The District Court ordered that the case proceed to arbitration and stayed the federal court litigation on July 17, 2000. (P.C. Supp. App. 14.)

Petitioner filed a Statement of Claim in arbitration on August 23, 2001 with the National Association of Securities Dealers, Inc. ("NASD"). (P.C. Supp. App. 39.) Respondent filed its Statement of Answer with the NASD on November 7, 2001. (C.A. Appellee App. Tab 1.) The parties selected arbitrators pursuant to NASD Dispute Resolution ("NASD DR") Rule 10308. Respondent submitted its ranking of potential arbitrators within the time allowed by NASD DR rules. (P.C. Supp. App. 56.) Pursuant to NASD DR rules, Petitioner filed a Request for Production of Documents to Respondent on November 25, 2001. (C.A. Appellee App. Tab 5.) Petitioner did not serve the Request for Production of Documents on Respondent until March 4, 2002. (C.A. Appellee App. Tab 6.) Respondent responded to

8. References to the Appendix to the Petition for Writ of Certiorari are cited as "P.C. App. __"; references to the Supplemental Appendix to the Petition for Writ of Certiorari are cited as "P.C. Supp. App. __"; and references to the Appendix filed by Respondent in the First Circuit are cited as "C.A. Appellee App. __."

Petitioner's Request for Production of Documents on April 3, 2002. (C.A. Appellee App. Tab 7.) In its response, Respondent objected to certain requests and produced responsive documents to other requests. *Id.* Respondent served its Request for Production of Documents on Petitioner on November 9, 2001. Petitioner never responded to Respondent's discovery requests and never produced any responsive documents to Respondent. (C.A. Appellee App. Tab 11.)

On April 14, 2002, Petitioner filed a Motion to Amend his Statement of Claim in Arbitration. (C.A. Appellee App. Tab 8.) Respondent objected to the Motion to Amend on April 26, 2002 and argued that the proposed new claims did nothing more than attack counsel and raise discovery issues. (C.A. Appellee App. Tab 9.) A three member arbitration panel (the "Panel") allowed Petitioner's Motion to Amend over Respondent's objections. (C.A. Appellee App. Tab 10.) The Amended Statement of Claim included a claim that Respondent failed to produce documents that Petitioner believed were relevant (and to which Respondent had timely filed objections). (C.A. Appellee App. Tab 11.) The Panel also ordered that the arbitration proceed despite the fact that Petitioner had not produced *any* documents to Respondent in discovery. (C.A. Appellee App. Tab 11.)

During the arbitration, the Panel heard the evidence presented by both parties. The Panel also considered and ruled on evidentiary issues raised by the parties. Following the arbitration hearing, the Panel dismissed Petitioner's claims in their entirety in an Award dated July 18, 2002. (P.C. Supp. App. 61.)

Subsequent to the arbitration, Petitioner obtained copies of tapes of the arbitration proceedings. (The NASD preserves the hearing record on those cassette tapes). Petitioner complained to the NASD that he did not receive all of the tapes (Petitioner received three (3) tapes and claims that four (4) existed) and that some of the contents of the hearing were missing from the tapes. (P.C. Supp. App. 67.) The NASD notified Petitioner on August 14, 2002 that "there were a total of three (3) tapes used to record the hearing on the merits" and that the NASD had provided Petitioner with an "exact" copy of the tapes.[9] (P.C. Supp. App. 62-66.)

Petitioner submitted a Motion to Re-open the case on August 16, 2002. (P.C. Supp. App. 70.) The District Court treated that motion as a Motion for Reconsideration, which it denied on September 6, 2002. (P.C. Supp. App. 88.) Petitioner filed a Motion to Request Vacation of the Arbitration Award ("Motion to Vacate") with the District Court on December 16, 2002. (P.C. Supp. App. 102.) Respondent objected to the Motion to Vacate and filed its own Motion to Confirm the Arbitration Award ("Motion to Confirm") on December 30, 2002. (C.A. Appellee App. Tab 3.) In his Motion to Vacate, Petitioner argued that the arbitration was "extremely unfair." (P.C. Supp. App. 102.) Petitioner complained that the Panel had improperly denied his evidentiary request for certain documents he deemed relevant and to which Respondent had objected. *Id.* Petitioner also complained that the NASD erased portions of the hearing tapes. *Id.* The District Court denied Petitioner's Motion to Vacate and allowed Respondent's Motion to Confirm on February 27, 2003. (P.C. Supp. App. 115.) The District Court did not issue a written opinion.

---

9. Respondent has not received copies of the hearing tapes.

The parties filed cross appeals in the First Circuit. In his appeal, Petitioner claimed, among other things, that the NASD had a conflict of interest and was therefore an improper venue for the arbitration; that "arbitration management frauds" resulted from the aforementioned conflict of interest; that the arbitration was "unfair"; that the District Court erred in failing to review evidentiary issues presented to the arbitration panel; that the District Court erred in denying Petitioner's request for additional testimony from NASD employees after the completion of the arbitration and after the Panel had rendered its award; that the District Court erred in refusing to add the NASD as a party to the case; and that the District Court's judgment was racially motivated. (P.C. App. 5-33.) The "arbitration management frauds" Petitioner complained of consisted *solely* of Respondent's alleged failure to submit its rankings of proposed arbitrators within the time required by NASD DR rules and the NASD's alleged tampering with the cassette tapes used to record the arbitration hearing. *Id.*

In its cross-appeal, Respondent contended that the District Court erred in treating Petitioner's Motion to Re-open the case as a Motion to Vacate the arbitration award thereby tolling the three (3) month statutory deadline for filing Motions to Vacate under the Federal Arbitration Act. (P.C. App. 34-60.) The First Circuit affirmed the judgment of the District Court on February 5, 2004. (P.C. App. 151.) The First Circuit did not issue a written opinion.

REASONS FOR DENYING THE PETITION

Petitioner asserts that the arbitration award should have been vacated under § 10(a)(1) of the FAA due to alleged (i) "fraud on violating the rules of the arbitration panel selection"; and alleged (ii) "fraud on modifying arbitration hearing tape." (Pet. at 12.) Under the Federal Arbitration Act, however, a district court may vacate an arbitration award only under very limited circumstances. Statutory grounds for appeal are limited to instances where: (1) the award was procured by corruption, fraud or undue means; (2) there was evident partiality or corruption among the arbitrators; (3) the arbitrators refused to postpone the hearing or refused to hear pertinent and material evidence; or (4) the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award was not made. *See* 9 U.S.C. § 10(a)(1) - (4).[10]

Moreover, in deciding whether to confirm or vacate an arbitration award, Courts must grant the arbitration panel's decision great deference. *See First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (where parties agreed to submit to arbitration, "the court should give considerable leeway to the arbitrator, setting aside his or her decision only in certain narrow circumstances.") Granting the appropriate deference to the Panel's decision here, the District Court properly denied Petitioner's motion to vacate and granted Respondent's motion to confirm the arbitration award. Petitioner appealed this decision to the First Circuit, which, after considering the same fraud arguments presented here, affirmed the District Court's judgment. Petitioner now seeks yet another review of those very same fraud arguments.

10. Although some Circuits have recognized additional judicially crafted grounds for challenging an arbitration award, none are applicable here, nor does Petitioner assert that any are.

I. Supreme Court Review of the Questions Presented in the Petition for Writ of Certiorari is Neither Warranted Nor Advisable

Review on a writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10. The questions presented in the Petition for Writ of Certiorari do not warrant review by this Court. Petitioner does not contend that the First Circuit decision is in conflict with the decision of another United States court of appeals; that the First Circuit has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or that the First Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, to call for an exercise of power of this Court. Nor does Petitioner contend that the First Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or that the First Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Rather, Petitioner merely seeks to have this Court revisit fraud allegations that previously have been considered and rejected by both the District Court and the First Circuit.[11] Petitioner sets forth no compelling reason for this Court to reconsider those allegations.

Moreover, the broad federal policy favoring the finality of arbitration awards counsels against granting certiorari in this case. The Congressional purpose of enacting the Federal Arbitration Act was to encourage speedy and final resolution

11. Respondent addresses Petitioner's assertion that the First Circuit denied his First Amendment right to free speech by failing to conduct a hearing in Section III below.

of arbitration disputes as an expeditious alternative to protracted litigation. That purpose is seriously undermined when claimants such as Petitioner are permitted to subject respondents to an endless series of appeals.

This matter has been pending for over four years. Following the arbitration hearing, a three member arbitration panel entered the arbitration award at issue. Both the District Court and the First Circuit have since rejected Petitioner's assertion that the arbitration award should be vacated due to fraud in selection of the arbitration panel and the alleged modification of the arbitration hearing tapes. In view of the broad federal policy favoring prompt resolution of disputes, **finality** of arbitration, and limited judicial intervention into arbitration, Petitioner's assertion that the arbitration award should have been vacated pursuant to § 10(a)(1) of the Federal Arbitration Act does not warrant this Court's review. *See Fradella v. Petricca*, 183 F.3d 17, 20 (1st Cir. 1999) (recognizing that legislative goal of FAA is to promote "the expeditious and final resolution of arbitral claims"); *see also Wilko v. Swan et al.*, 346 U.S. 427, 431 (1953), *overruled on other grounds by Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989) ("The reports of both Houses on [United States Arbitration] Act stress the need for avoiding the delay and expense of litigation.").

II. The First Circuit Did Not Err in Affirming the District Court's Judgment Confirming the Arbitration Award

Petitioner offers only two bases for vacatur of the arbitration award under 9 U.S.C. § 10(a): "fraud on violating the rules of the arbitration panel selection" and "fraud on modifying arbitration hearing tape."[12] Petitioner cannot demonstrate by clear and convincing evidence that the arbitration award was procured by fraud, nor can he demonstrate that the purported fraud materially related to an issue in arbitration.

A. As the District Court correctly held, Petitioner cannot demonstrate by clear and convincing evidence that the arbitration award was procured by fraud

The Circuit courts that have construed 9 U.S.C. § 10(a)(1) have uniformly held that in order to vacate an arbitration award on the ground that it was procured by fraud, the alleged fraud must be established by clear and convincing evidence. *See, e.g., Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378, 1383 (11th Cir. 1988) (movant must establish fraud by clear and convincing evidence) (citations omitted); *LaFarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1339 (9th Cir. 1986) ("appellant must establish the fraud by clear and convincing evidence") (citing *Dogherra v. Safeway Stores, Inc.*, 679 F.2d 1293, 1297 (9th Cir. 1982), *cert. den.*, 459 U.S. 990 (1982)

12. The Petition for Writ of Certiorari also erroneously asserts that "Plaintiff successfully proved that the Defendant Hire Lawyers to Lie and Perjury in Affidavit." This assertion is wholly without merit. Moreover, Petitioner offers no facts or law in support of this assertion that would warrant the Court's consideration.

("In order to protect the finality of arbitration decisions, courts must be slow to vacate an arbitral award on the grounds of fraud. . . . The fraud must be established by clear and convincing evidence.")).

The District Court correctly denied Petitioner's motion to vacate the arbitration award. Petitioner cannot demonstrate either "fraud on violating the rules of the arbitration panel selection" or "fraud on modifying arbitration hearing tape" by clear and convincing evidence. Although not articulated in the Petition for Writ of Certiorari, on appeal to the First Circuit Petitioner claimed that Respondent failed to provide the NASD with its rankings of proposed arbitrators within the time allowed by NASD DR rules. Petitioner also takes issue with the appointment of arbitrators to the Panel who were not included on the original list of proposed arbitrators circulated to the parties by the NASD DR. The record, however, clearly supports the fact that the arbitration panel was selected in conformance with the rules of the NASD DR. The only evidence before the First Circuit (and the District Court) with respect to this issue was a March 26, 2002 letter from the Associate Vice President and Regional Director of the NASD DR to Petitioner. In that letter, Petitioner was informed:

* * *

> On December 4, 2001, we notified you that your case was ready for the appointment of arbitrators under our Neutral List Selection System (NLSS). Rule 10308 of the Code of Arbitration Procedure (the "Code") provides that NASD Dispute Resolution (NASD DR) gives each party a list of arbitrators. The parties must strike through or

> cross out, and rank the arbitrators on the list and return the list to us within twenty days after the lists are sent to the parties. . . . If a party's list is not received on time, the party is deemed to have accepted all arbitrators on the list. Pursuant to Rule 10308(c)(4)(B) of the Code, the Director has the authority in certain circumstances to appoint an arbitrator not on the list to fill a Panel.
>
> * * *
>
> Your arbitrator ranking form was sent to us by US Mail and received in our office on December 20, 2001. Respondent's (T.D. Waterhouse Investor Services, Inc.) ranking form was sent to us by facsimile and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001. I enclose for your review a copy of the date stamped cover letter that accompanied Respondent's ranking form. Both parties responses were received before the deadline of December 24, 2001. We used both parties lists to create a consolidated list. The Director used his authority to extend the list to complete the panel because all of the industry arbitrators were struck by you and the Respondent.
>
> * * *

(P.C. Supp. App. 56.)

Petitioner also alleges that there were four (4) hearing tapes that recorded the arbitration proceedings, but that the NASD only provided him with three tapes. Petitioner contends that the NASD "'cooked' (editing and modifying)" those tapes. The only evidence before the First Circuit (and the District Court) with respect to this issue indisputably demonstrates that Petitioner received an "exact" copy of the tapes of the arbitration proceedings. The record included email correspondence between the NASD and Petitioner from August 10, 2002 through August 26, 2002. In the correspondence, an NASD employee states on behalf of the NASD:

> I have confirmed with the Panel that there were a total of three (3) tapes used to record the hearing on the merits during the one day hearing. The tapes that I sent to you were a [sic] "exact" recoding of the tapes that I received back from the panel.
>
> * * *
>
> The panel has confirmed that the entire hearing was tape recorded, except for executive sessions, which are not recorded. The Panel also said that they stopped the recorder when you stated that you would like to take a break.
>
> * * *

(P.C. Supp. App. 62-66.)

The First Circuit correctly affirmed the District Court's order confirming the arbitration award because Petitioner did not demonstrate by clear and convincing evidence that there was any fraud in connection with either the selection of the arbitration panel or the recording of the arbitration hearing.

B. As the District Court correctly held, Petitioner cannot demonstrate that the purported frauds materially relate to an issue in arbitration

The Circuit Courts are also uniform in holding that before a motion to vacate will be allowed, the movant must demonstrate that the fraud materially related to an issue in arbitration. *See, e.g., LaFarge Conseils Et Etudes*, 791 F.2d at 1339 ("appellant must establish the fraud was materially related to an issue in the arbitration") (citing *Dogherra*, 679 F.2d at 1297 (the fraud must materially relate to an issue in the arbitration); *Bonar*, 835 F.2d at 1383 (person seeking to vacate award must demonstrate that fraud materially related to issue in arbitration); *Forsythe Int'l S.A. v. Gibbs Oil Co.*, 915 F.2d 1017, 1022 (5th Cir. 1995) (9 U.S.C. § 10 does not require vacatur in the event of all fraudulent conduct but only where there is a nexus between the fraud and the basis for arbitration panel's decision; where the panel hears allegation of fraud and then rests its decision on grounds clearly independent of issues connected to the fraud, the basis for vacatur is absent).

Neither the purported fraud in selecting the arbitration panel, nor the purported fraud in the recording of the arbitration proceeding, materially related to an issue in the arbitration. The underlying causes of action for "trade mistake" asserted by Petitioner in arbitration involved allegations that Respondent failed to execute a trade of 5000

shares of Peritus Software Services, Inc. Both of the purported "frauds" of which Petitioner complains are procedural in nature and do not relate to any of the issues raised by Petitioner in his Statement of Claim or Amended Statement of Claim. *See, e.g., LaFarge Conseils Et Etudes*, 791 F.2d at 1339. The purported "fraud on violating the rules of the arbitration panel selection" relates to the composition of the arbitration panel that was empanelled prior to the arbitration. The purported "fraud on modifying arbitration hearing tape" relates to conduct that allegedly took place after the arbitration. Petitioner has not and cannot credibly argue that Respondent acted fraudulently with respect to any material issue raised by him during the arbitration proceedings.

III. The First Circuit Did Not Violate Petitioner's First Amendment Rights by Affirming the District Court's Judgment Without First Holding a Hearing

Petitioner also asserts, without citation to any authority, that the First Circuit violated his First Amendment right to free speech by denying his appeal without first holding a hearing. The Federal Rules of Appellate Procedure for the First Circuit do not require the First Circuit to hold a hearing prior to ruling on an appeal.

> Oral argument must be allowed in every case *unless* a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:
>
> (A) the appeal is frivolous;
>
> (B) the dispositive issue or issues have been authoritatively decided; or

> (C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Fed. R. App. P. 34(a)(2) (emphasis added).

Here, in response to Petitioner's request for oral argument, the First Circuit issued a notice informing Petitioner that:

> In accordance with Rule 34 of the Federal Rules of Appellate Procedure, as amended effective December 1, 1993, this is to advise you that the three judges of a panel, after examination of the briefs and record, are unanimously of the opinion that oral argument is not needed in this case.

De Shen v. T.D. Waterhouse Investor Services, Inc., Notice of Denial of Request for Oral Argument, No. 03-1478, (1st Cir. Sept. 30, 2003).

The First Circuit did not violate Petitioner's First Amendment rights ruling on his appeal without holding a hearing, and certiorari is not warranted with respect to this issue.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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(5)

No. 04-381

IN THE

Supreme Court OF United States

De Shen Petitioner

vs.

T.D. Waterhouse Investor Service Respondent

On Petition For Writ Of Certiorari To

US Court Of Appeals For The First Circuit

REPLY BRIEF OF PETITIONER

De Shen

11 Summer Ave

Malden, MA 02148

(781) 324-3285

Dec. 12, 2004

LIST OF PARTIES

(1) PETITIONER: De Shen

(2) RESPONDENT: T.D. Waterhouse Investor Service, Inc

(3) Judges in United States Court of Appeals for the First Circuit:

Levin H. Campbell;

Juan R. Torruella;

Bruce M. Selya

(4) Judge in United States District Court for the District of Massachusetts:

William G. Young

(5) Fraud Maker who are not listed as RESPONDENT:

Suzanne Green --- NASD arbitration administrator

Elizabeth R. Clancy --- NASD Associate Vice President and Regional Director

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I. Fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished

Although this case started with a relatively minor issue (stock trade fraud or stock trade mistake), at current stage, it brought up some very critical and very serious issues:

(1) Whether there are some organizations or special roles in USA are beyond (or not under restricted by) the US Constitution and US Law.

Some organizations, (e.g. NASD), are acting as second justice system. Theoretically, employee work in such organization should be the model of following and obeying US Laws and US Constitution. And Petitioner believes 99% of employee of such organizations (e.g. NASD), are honest and dependable.

However, this case indeed exposed two fraud makers in NASD:

Ms. Suzanne Green --- NASD arbitration administrator

Ms. Elizabeth R. Clancy --- NASD Associate Vice President and Regional Director

Those two fraud makers, along with Mr. Derek Anderson, Mr. Pete S. Michaels, the counsel of

Respondent, formed a gang of four on this fraud issue. Among these four, Ms. Elizabeth R. Clancy is the head of this conspiracy gang.

When the Petitioner discovered "the fraud on violating the rules of the arbitration panel selection"[1], the Petitioner asked Ms. Suzanne Green and the Respondents six simple questions. Neither Ms. Suzanne Green nor the Respondents were able to answer those six simple questions. Ms. Suzanne Green only dare to orally telling lies that the respondent submitted its ranking form on Dec. 24, 2001. It is Ms. Elizabeth R. Clancy **forged** the entire respondent ranking form submission story in a letter to Petitioner. (See Supplemental Appendix of Petition Page 56 – 58). Although the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001, in Ms. Elizabeth R. Clancy's letter of March 26, 2002, she wrote "Respondent's ranking form was sent to us by facsimile and received in our office on December 11, 2001, with an original copy arriving on December 12, 2001. I enclose for your review a copy of the date stamped cover letter that accompanied Respondent's ranking form." **The NASD Associate Vice President and Regional Director were telling lie and forging documents!!!** Is this a serious criminal action? If Martha Stewart has to go to Jail for six Months due to her relatively

[1] See Supplemental Appendix of Petition: Page 73 – 75, Also see Appendices For Writ of Certiorari: Page 123 – 126, Page 109 – 116, Page 81 – 83, Page 18 – 20

minor trade fraud, how many years that Ms. Elizabeth R. Clancy should be in Jail due to her serious criminal action? In the fraud of "'Cooking' Hearing Tape", at least two critical sentences were erased from Arbitration Hearing Tape[2]. **If a second Justice System relies on telling lie, falsifying records, and forging documents to run business, can US people get real justice?** For fighting against these frauds, the petitioner submitted several motions to the District Court and US Court of Appeals. The District Court Judge knows this is a serious issue, Mr. Young said: "your motion is a serious one." (See Supplemental Appendix of Petition, Page 108, line 13) However, the District Court Judge did not investigate this serious issue and did not punish this serious criminal action, is it indicating that the District Court Judge ignored his duty? The judges in the US Court of Appeals reject to hold a hearing. Is it a bureaucratic behavior?

The Petitioner first time exposed "the fraud on violating the rules of the arbitration panel selection" on Aug. 10, 2002[3], more than TWO years has passed, this fraud has not been punished yet.

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[2] See (I) Appendices for writ of certiorari Page 83 line 14 – Page 85 line 11 (II) Appendices for writ of certiorari Page 91, Paragraph (b), start from line 20. (III) Appendices for writ of certiorari Page 104 line 28 – Page 106 line 23 (IV) Supplemental Appendix Of Petition Page 68-69

[3] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 71 - 75

During Feb. 2003 to April 2003, the Petitioner submitted two motions to the District Court:

(i) Motion To Request Ms. Kelly Davis To Testimony on the Court[4]

(ii)Motion To Add NASD Dispute Resolution, Inc to Defendant List[5]

However, both these two motions were denied by the District Court Judge. Mr. Young wrote on April 20, 2003[6]: "In view of the appeal, to the extent **this court has jurisdiction**, this motion and that filed on 3/05/03 [35-1] (request for Ms. Kelly Davis to Testimony on the Court) are both denied."

If the District Court DOES NOT have the power to punish the fraud made by NASD Associate Vice President and Regional Director and the Respondent, then which Court have the power to punish this fraud? **Does Supreme Court have the power to punish the fraud made by NASD Associate Vice President and Regional Director and the Respondent?** Are all frauds, which made by NASD employee and the Respondent NOT punishable? Are NASD and the Respondent above the US LAW and US Constitution?

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[4] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 116 – 119

[5] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 120 - 122

[6] See Supplemental Appendix Of Petition For Writ of Certiorari, Page 123

In the speech on explaining **the new law passed by Congress and Senate** "Tough New Enforcement Initiatives for Reform on Corporate Responsibility", President Bush said:

"We've learned of some business leaders obstructing justice, and misleading clients, falsifying records, business executives breaching the trust and abusing power."

.....

"And government can ensure that those who breach the trust of the American people are punished."

.....

"Defrauding investors is a serious offense, and the punishment must be as serious as the crime."

.....

"If more scandals are hiding in corporate America, we must find and expose them now, so we can begin rebuilding the confidence of our people and the momentum of our markets."

According to the Executive Order of July 9, 2002, according to the above speech given by President Bush, the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished. Do not punish this fraud is a corruption behavior.

The petitioner's questions (1) – (7) in the Petition for Writ of Certiorari are all related to this serious

issue. The petitioner's questions (1) – (7) are presented according to basic principle of logic deduction. The Respondent attacking Petitioner's questions indicates that the Respondent do not understand the basic principle of logic deduction.

(2) **Justice is truth in action**

Lawyers should be honest when defending their clients. However, in handling this case, the Lawyers of the Respondent defended their client by hiding the truth, telling lies and making perjury.

Ms. Kelly Davis is the NASD employee who directly handled the arbitration panel selection. After the deadline of ranking form submitting, Ms. Kelly Davis committed that the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001. Two month later, in a telephone conversation with Ms. Kelly Davis, she confirmed that the Respondent did not submit its ranking form by the deadline of Dec. 24, 2001[7]. **Until now, Ms. Kelly Davis has not directly lied to me yet on this issue.**

When Petitioner submitted "MOTION On Request to arrange Ms. Kelly Davis to testimony on this court"[8] in the US Court of Appears on Nov. 3, 2003,

[7] See Appendices for writ of certiorari Page 125 line 5 – Page 126 line 4.
[8] See Appendices for writ of certiorari Page 109 - 116

the lawyers of Respondent submitted "MEMORANDUM OF TD WATERHOUSE INVESTOR SERVICES, INC IN OPPOSITION TO DE SHEN'S MOTION TO TAKE THE TESTIMONY OF KELLY DAVIS OF THE NASD[9]", tried to preventing Ms. Kelly Davis speak out the truth.

Following the baseline of lie set by Ms. Elizabeth R. Clancy, Mr. Derek Anderson made a perjury in his Affidavit[10] on Nov. 24, 2003.

In order to punish the Respondent's fraud, lie and perjury, the Petitioner submitted two motions:

(i) MOTION On Request Double Penalty To The Defendant For Its Continually Telling Lie[11]

(ii)MOTION On Requesting Further Double Penalty To The Defendant For It Hire Lawyers to Lie in Affidavit[12]

Justice is truth in action. This is the basic principle of Judgment.

However, the judges in the US Court of Appeals ignored this basic judgment principle. They do not want to hear the truth. They do not want to make judgment based on the truth. They denied arranging

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[9] See Appendices for writ of certiorari Page 117 - 120
[10] See Appendices for writ of certiorari Page 121 - 122
[11] See Appendices for writ of certiorari Page 123 - 128
[12] See Appendices for writ of certiorari Page 129 - 150

Ms. Kelly Davis to speak out the truth in the US Court of Appeals. They denied punishing the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent. They denied punishing the Respondent's lie and perjury.

Such misjudgment should be reviewed by Supreme Court. The petitioner's questions (8) – (9) in the Petition for Writ of Certiorari are related to this serious issue.

The Respondent attacked the Petitioner in the first page of its 'Brief in Opposition': "Petitioner has preceded *pro se* throughout these proceedings and continues to do so." The Petitioner proudly to reply to the Respondent: "Attorney *pro se* is much better than Attorney *liar*!"

II. Petitioner has the right to speak out in the US Court of Appeals

The Bill Of Right, First Amendment are quoted as following:

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

As presented in last paragraph, this case is a serious case. The District Court judge feels that the District

Court has jurisdiction, which imply they do not have the power to punish fraud made by NASD employee and the Respondent. If the judges in US Court of Appeals think they do not have the power to punish fraud made by NASD employee and the Respondent, they have to write down precisely. In stead, the judges in US Court of Appeals just simply denied to hold a hearing and denied all the motions submitted by Petitioner.

The US Court of Appeals and the Respondent referenced the Rule 34 of the Federal Rules of Appellate Procedure, however, the three judges do not qualify to apply Rule 34 to deny hearing on this case, since the reason of they denying on holding a hearing on this case does not belong to any of the three reasons listed in Rule 34:

(A) This case is a serious case (Two frauds are exposed in this case);

(B) There are issues which the District Court has jurisdiction, hence it needs higher level Court to make judgment;

(C) Some investigations are needed in order to punish the frauds made by NASD employee and the Respondent.

According to the above reasoning, the judges in the US Court of Appeals denying holding a hearing on this case is abridging the freedom of speech. Hence

it is violated the Bill Of Right. Hence it is violated the US Constitution.

III. The fraud changed the entire Arbitration Result

Without the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent, the arbitration result will be entirely different with the current arbitration result. Without the fraud, the arbitration panel should include the first three arbitrators selected by Petitioner according to the Arbitration rules, since the Respondent missed the deadline. From the tracking records, those three arbitrators are firmly standing at investors' side to fight against trading frauds. Actually, Petitioner later asked one of these Arbitrators, he does believe there was one trade mistake in the case I described.

Hence, the fraud made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent conducted the current un-fair arbitration results.

CONCLUTION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted. The two frauds made by Ms. Elizabeth R. Clancy, Ms. Suzanne Green, and the Respondent should be punished.